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ABSTRACT

This document reports the proceedings of a hearing on two pieces of Federal immigration emergency legislation: (1) a bill to amend the Immigration and Nationality Act respecting powers and procedures in immigration emergencies and for other purposes (the "Immigration Emergency Act"), and (2) a bill to amend the Immigration and Nationality Act to provide special authorities and procedures for the control of immigration emergencies (the Immigration Emergency Procedures Act of 1983). The legislation was proposed in response to the influx of aliens to South Florida because of the Mariel boatlift in 1980. Testimony and material for the record was presented by local groups and organizations, Federal, State, and county representatives, and representatives of organizations concerned with citizen and non-citizen rights. The thrust of the testimony concerns the difficulties of dealing with a large alien influx and the need for federal assistance. Specific topics include the impact of immigration on Dade County schools, the costs of the Cuban flotilla, and an analysis of the asylum and refugee provisions of the proposed immigration reform and control act of 1982 by the Lawyers Committee for International Human Rights. (CG)

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S. HRG. 98-1231

IMMIGRATION EMERGENCY LEGISLATION

ED263267

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 1725

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT RESPECTING POWERS AND PROCEDURES IN IMMIGRATION EMERGENCIES, AND FOR OTHER PURPOSES

AND

S. 1983

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO PROVIDE SPECIAL AUTHORITIES AND PROCEDURES FOR THE CONTROL OF IMMIGRATION EMERGENCIES

MIAMI, FLORIDA
OCTOBER 28, 1983

Serial No. J-98-109

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CONTENTS

OPENING STATEMENTS

	Page
Simpson, Hon. Alan K., a U.S. Senator from the State of Wyoming, chairman, Subcommittee on Immigration and Refugee Policy	1
Chiles, Hon. Lawton, a U.S. Senator from the State of Florida	101
Hawkins, Hon. Paula, a U.S. Senator from the State of Florida	105

PROPOSED LEGISLATION

S. 1725, a bill to amend the Immigration and Nationality Act respecting powers and procedures in immigration emergencies, and for other purposes	3
S. 1983, a bill to amend the Immigration and Nationality Act to provide special authorities and procedures for the control of immigration emergencies	19

CHRONOLOGICAL LIST OF WITNESSES

Nelson Alan C., Commissioner, Immigration and Naturalization Service; David H. Pingree, Secretary, Department of Health and Rehabilitation Services; Harvey Ruvin, commissioner of Dade County, FL; and Leonard Britton, superintendent of schools, Dade County, FL	39
Paddock, Paul, Florida State chairman, Federation for American Immigration Reform; Carlos J. Arboleya, chairman, Hispanic Affairs Committee; Alvah H. Chapman, Jr., chairman, Miami Citizens Against Crime; and Laurie A. Raskin, executive director, Greater Miami United, Miami-Dade County Community College, New World Campus	77
McCarthy, Rev. Edward A., Archbishop of Miami; Arthur C. Helton, director, Political Asylum Project, Lawyers Committee For International Human Rights; Rev. Walter F. Horlander executive director, Florida Council of Churches; Michael S. Hooper, executive director, National Emergency Coalition for Haitian Refugees; Roberto Canino, Miami district director, League of United Latin-American Citizens; and Father Gerard Jean-Juste, executive director, Haitian Refugee Center, Inc	108

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Arboleya, Carlos J.: Testimony	92
Britton, Leonard: Testimony	62
Canino, Roberto: Testimony	156
Chapman, Alvah H., Jr.: Testimony	93
Helton, Arthur C.:	
Testimony	112
Letters from Arthur C. Helton to:	
Richard W. Day, November 15, 1983	119
Alan C. Nelson, November 8, 1983	137
Prepared statement by Arthur C. Helton and Michael H. Posner	120
Hooper, Michael S.:	
Testimony	144
Letter to Senator Alan Simpson, chairman, Subcommittee on Immigration and Refugee Policy, Committee on Judiciary, May 11, 1984	166
Horlander, Rev. Walter F.:	
Testimony	138
Additional material	142
Jean-Juste, Father Gerard: Testimony	159

	Page
McCarthy, Most Rev. Edward A.: Testimony	108
Nelson, Alan C.:	
Testimony	39
Prepared statement	44
Paddock Paul:	
Testimony	77
Articles:	
Cost of the Cuban Flotilla	84
"Immigration Reform Bill Does Have a Constituency," by Paul M. Paddock, from the Palm Beach Post, October 17, 1983	91
Pingree, David H.:	
Testimony	55
Prepared statement of Gov. Bob Graham	58
Letter to Alan K. Simpson, November 8, 1983	72
Raskin, Laurie A.: Testimony	97
Ruvin, Harvey: Testimony	61

APPENDIX

Statement of Eugene H. Douglas, Ambassador, U.S. Coordinator for Refugee Affairs	171

IMMIGRATION EMERGENCY LEGISLATION

FRIDAY, OCTOBER 28, 1983

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,
COMMITTEE ON THE JUDICIARY,
Miami, FL.

The subcommittee met, pursuant to notice, at 1:25 p.m., in the central courtroom, U.S. District Court Building, Miami, FL, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Paula Hawkins and Lawton Chiles.

Staff present: Richard W. Day, chief counsel, Subcommittee on Immigration and Refugee Policy; Deborah Kilmer, legislative aide to Senator Lawton Chiles; and John Mica, administrative assistant to Senator Paula Hawkins.

OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S. SENATOR FROM THE STATE OF WYOMING, CHAIRMAN, SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY

Senator SIMPSON. The meeting will come to order.

Thank you for your patience.

I was with the Dade County Bar and talked to that group. I wanted to particularly pay tribute to Chief Judge Eaton and thank him for these facilities. He has been most kind and most cooperative, and I thank him for his hospitality and his generosity.

Lawton Chiles is delayed. He had a very important appointment which he was expected to be on the floor, and Paula Hawkins was delayed by air traffic. She was coming and had some difficulty. When they arrive, I will ask whoever may be at the table to discontinue for a moment in time, and we will introduce them at that time.

Both of them have been very interested in this legislation. Both of them have presented pieces of legislation, and both of them have been very patient with me as I have tried to guide the immigration reform legislation along. I have asked them to please hold back—hold that particular part up if they would, so we can deal with that on a separate basis, and they have both been quite generous in doing that.

I think it is very fitting we meet in Miami this afternoon to address these two proposals and address the issue of immigration emergencies.

Immigration and refugee policy is indeed a Federal responsibility, and our Government must have the ability to respond swiftly and appropriately. The question is, How do we respond swiftly and appropriately to an unanticipated mass immigration to our shores?

I think all of us are justly proud of our tradition of a very generous refugee policy, the most generous on Earth; but that policy must be an orderly one. Most Americans I think continue to support our refugee program, but the mismanagement of the Mariel boatlift erodes that kind of support. That is my feeling.

Here in south Florida where the startling impact of the boatlift was felt, the Government was not able to respond, and the result was a crisis, the effects of which are still being felt by the Nation.

South Florida, of course, had the sharpest impact with regard to the public services, crime, business impact.

These two bills, the Immigration Emergency Powers and Procedures Act and the Immigration Emergency Act, introduced by Senators Hawkins and Chiles contain provisions which permit the President to declare an immigration emergency, and this declaration would enable the Government to respond quickly.

One of the things the legislation seeks to prohibit is residents of the United States from aiding aliens in their efforts to enter this country without authorization. We saw so clearly in 1980 the U.S. residents then were willing to lend assistance to aliens that were found later not to be entitled to admission in the United States. In a hearing in Washington a year ago we heard testimony in that regard.

Here today we shall have an opportunity to hear directly from some of the local groups and organizations their most urgent concerns with the legislation.

We have here today representatives of Federal, State, and county government, representatives of organizations concerned with the rights of all citizens and noncitizens in the United States, and representatives from other groups and associations here in south Florida which have experienced firsthand the impact of a large number of undocumented aliens entering this country.

All of you have a particular and intense interest in the legislation, and in the way it is drafted to provide the President with the necessary powers to protect this Nation's borders. So we shall look forward to your testimony.

[A copy of bills S. 1725 and S. 1983 follow:]

II

98TH CONGRESS
1ST SESSION

S. 1725

To amend the Immigration and Nationality Act respecting powers and procedures in immigration emergencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2 (legislative day, AUGUST 1), 1983

Mrs. HAWKINS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act respecting powers and procedures in immigration emergencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Immigration Emergency Act".

SEC. 2. (a) Chapter 4 of title II of the Immigration and Nationality Act is amended—

(1) by inserting after the chapter heading the following subchapter heading:

"Subchapter A—In General"; and

(2) by adding at the end the following new subchapter:

"Subchapter B—Immigration Emergencies

"DECLARATION OF IMMIGRATION EMERGENCY

"SEC. 240A. (a) The President may declare an immigration emergency with respect to any designated foreign country if the President, in his judgment, determines that—

"(1) a substantial number of aliens who lack documents authorizing entry into the United States appear to be ready to embark or have already embarked for the United States, and the aliens will travel from, or are likely to travel in transit through, the foreign country,

"(2) the normal procedures of this Act or the current resources of the Service would be inadequate to respond effectively to the influx of these aliens, and

"(3) the influx of these aliens endangers the welfare of the United States or any community within the United States.

"(b) Within 48 hours of the declaration of an immigration emergency under subsection (a), the President shall inform the Speaker of the House of Representatives and the President pro tempore of the Senate of the reasons prompting

the declaration. The President shall cause the declaration to be published in the Federal Register as soon as practicable.

"(c) The declaration shall expire automatically 120 days after the date of its proclamation unless ended sooner by the President. The President may extend the declaration for additional periods of 120 days each by following the procedure set forth in subsection (b) if, in his judgment, the conditions described in subsection (a) continue to exist.

"EMERGENCY POWERS AND PROCEDURES

"SEC. 240B. (a) Upon declaration of an immigration emergency under section 240A with respect to a designated foreign country, the President may invoke any or all of the following emergency powers and procedures and may direct that any of these powers be exercised in accordance with international law beyond the territorial limits of the United States, including on and over the high seas, except as limited in paragraph (3)(B):

"(1) The President may direct that any class or category of conveyance subject to the jurisdiction of the United States which—

"(A) is bound directly or indirectly for the designated foreign country and

"(B) has not been authorized to so travel pursuant to section 240C,

be precluded from departing from the United States or be intercepted while en route and required to return to the United States if feasible, or be required to proceed to any other reasonable location until such time as it is feasible to return to the United States, or, if appropriate, allowed to proceed to any other reasonable location.

"(2) The President may prohibit any class or category of conveyance subject to the jurisdiction of the United States from transporting, regardless of destination, any aliens or class or category of aliens who are of a specific nationality or citizenship or who may be traveling from or through the designated foreign country, unless prior permission for such transportation has been granted under section 240C.

"(3) The President may order that the arrival in the United States of any aliens or class of aliens who lack documents authorizing entry into the United States or who are otherwise inadmissible and who are traveling directly or indirectly from or in transit through a designated foreign country may be prevented—

"(A) by precluding the entry of any class or category of conveyance, regardless of nationality, into the territorial sea of the United States or any

waters, lands, or airspace over which the United States may exercise any customs, fiscal, immigration, or sanitary jurisdiction in accordance with international law, and

"(B) by returning or requiring the return of such aliens or any class or category of conveyance subject to the jurisdiction of the United States carrying any such alien to the designated foreign country, or to some other reasonable location, if appropriate measures, prescribed by the Attorney General and reasonable under the circumstances, are taken to ensure that the international legal obligations of the United States concerning refugees are observed.

"(4)(A) Upon the declaration of an immigration emergency, the President may exempt any source, activity, or facility of any agency (as defined in 240G(6)) from applicable environmental requirements pursuant to—

"(i) section 313(a) of the Federal Water Pollution Control Act (33 U.S.C. 1323(a)),

"(ii) section 1447(b) of the Public Health Service Act (42 U.S.C. 300j–6(b)),

"(iii) section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903),

"(iv) section 6001 of the Solid Waste Disposal Act (42 U.S.C. 6961), or

"(v) section 118 of the Clean Air Act (42 U.S.C. 7418).

"(B) Upon a Presidential finding, transmitted to Congress, that an exemption is necessary to respond to an immigration emergency, the President may temporarily exempt any source, activity, or facility of any agency which is directly or substantially related to the immigration emergency from applicable requirements of—

"(i) the National Environmental Policy Act (42 U.S.C. 4321 et seq.),

"(ii) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.),

"(iii) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.),

"(iv) the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.),

"(v) the National Historic Preservation Act (16 U.S.C. 470 et seq.), and

"(vi) any other Federal, State, or local law which is intended principally to protect or preserve the environment, wildlife, or aspects of the history or heritage of the United States.

"(C) The President may, in his discretion, require that a source, activity, or facility of any agency which is directly or substantially related to the immigration emergency nonetheless meet some or all environmental standards without thereby creating a private right of action to enforce that requirement.

"(D) Unless continued by the President, an exemption under this paragraph shall lapse upon termination of an immigration emergency. The President may continue to invoke an exemption described in this paragraph after the termination of an immigration emergency in increments not to exceed one year at a time if he determines that circumstances related to the immigration emergency make the continuation of such exemption necessary.

"(b)(1) The detention of any alien coming into the custody of the United States as a result of the circumstances leading up to or comprising an immigration emergency shall be in any civilian facility, whether maintained by the Federal Government or otherwise, as the Attorney General may direct, or in any Department of Defense facility, as the Secretary of Defense may direct. The Attorney General may at any time transfer an alien from one place of detention to another.

"(2) No alien shall be released from detention pending a final determination of admissibility, or pending deportation, if

the alien is found excludable, except in the discretion of the Attorney General, and under such conditions as the Attorney General may prescribe. Any alien applying for admission from foreign contiguous territory may, in the discretion of the Attorney General, be required to remain outside of the United States pending a final determination of admissibility. No court shall review any decision of the Attorney General made pursuant to this subsection to detain, to transfer, or to release an alien, except that any person so detained may obtain review, in habeas corpus proceedings, on the question of whether that person falls within the category of aliens subject to detention.

"(3) The provisions of this subsection shall continue in effect regardless of the termination of the immigration emergency.

"(c)(1) The President may designate one or more agencies of the Federal Government to administer any of the provisions of this subchapter which do not specifically require a Presidential determination. In the course of the enforcement and administration of this subchapter, the designated agency or agencies may promulgate regulations, may require the assistance of other Federal civilian agencies, and may request assistance from any State or local agency.

"(2) The President may direct that any component of the Department of Defense, including the Army, Navy, and

Air Force, provide assistance, any statute, rule, or regulation to the contrary notwithstanding.

"(3) Any such agency or military component may assist in whatever manner is required, and specifically in the actual detention, removal, and transportation of an alien to the country to which he is being deported. The members of any such agency or military component are authorized to stop, board, and inspect any conveyance which is believed to be subject to the provisions of this subchapter, and, with or without a warrant or other process, may arrest persons and seize any conveyance found to be in violation of any provision of this subchapter.

"(d) In providing assistance under this subchapter, agencies shall have the same authority as for providing disaster relief under section 309 of the Disaster Relief Act of 1974 (42 U.S.C. 5149).

"TRAVEL RESTRICTIONS AND LICENSING

"SEC. 240C. (a) Unless prior approval for the travel or transportation has been obtained under subsection (b), it shall be unlawful for any person—

"(1) upon the invocation of the power described in section 240B(a)(1), to cause any class or category of conveyance subject to the jurisdiction of the United States to travel or be transported to a designated for-

eign country or within such distance therefrom as the President may specify, or

"(2) upon the invocation of the power described in section 240B(a)(2), to cause any class or category of conveyance subject to the jurisdiction of the United States to transport any alien whose transportation has been prohibited by the President.

"(b)(1) After the declaration of an immigration emergency, the agency designated under section 240B(c) may grant approval for the transportation of aliens and for travel to or around a designated foreign country by regulation for certain classes or categories of aliens and of conveyances. The owner or operator of any conveyance not authorized such travel or transportation by regulation may apply to the designated agency for a license granting permission for one or more such trips. The designated agency shall establish by regulation the procedures governing the application for and the approval and revocation of such licenses. The designated agency may authorize officials of any other agency of the Federal Government to accept and transmit applications for licenses to the designated agency or to grant or deny such licenses under standards established by the designated agency.

"(2) The district courts of the United States shall have jurisdiction to review any final decision denying permission for travel or transportation under this section, except that

review may be obtained prior to a final administrative decision with respect to any conveyance if irreparable injury would occur before a final administrative decision could be obtained.

"(c)(1) No travel or transportation of aliens shall be approved under this section if it appears that such travel or transportation may result in or contribute to a violation of any of the immigration laws.

"(2) The burden of proof shall be on the person seeking permission to establish that the travel of the conveyance or that the transportation of the aliens in question will not result in or contribute to any violation of any of the immigration laws.

"(d) Nothing in this section shall be construed to require the agency designated by the President to approve the travel of any conveyance or the transportation of any alien.

"PENALTIES

"SEC. 240D. (a)(1) Any conveyance involved in a violation of section 240C(a) shall be subject to seizure and forfeiture and the owner, operator, and any person causing such conveyance to be involved in the violation shall be subject to a civil fine of up to $10,000 for each separate act in violation of that section.

"(2) The procedures specified in paragraphs (3), (4), and (5) of section 274(b) shall apply to seizures and forfeitures

incurred, or alleged to have been incurred, under the provisions of this subsection.

"(b) Any person who knowingly engaged or attempts to engage in any conduct prohibited under section 240C(a) shall be fined not more than $50,000 or imprisoned for not more than five years, or both, for each separate prohibited act.

"(c) This section shall not apply to acts occurring before the date following the date of publication in the Federal Register that the President has invoked the powers contained in section 240B(a)(1) or 240B(a)(2), except that it shall apply after the date of invocation of such powers to any person who has learned or been informed of the invocation of such powers.

"MISCELLANEOUS

"SEC. 240E. (a) Violations of any provision of this Act committed during an immigration emergency may be investigated by the Federal Bureau of Investigation, the Immigration and Naturalization Service, the Coast Guard, or any component of the Department of the Treasury. Assistance in investigating violations of, or in enforcing, this Act may, with the approval of the Attorney General, be provided by any Federal, State, or local agency, including the Army, Navy, and Air Force, any statute, rule, or regulation to the contrary notwithstanding.

"(b) Nothing in this subchapter shall relieve any carrier or any other person of any civil or criminal liability, duty, or consequence that may arise from transportation or the bringing of any alien to the United States.

"FUNDING

"SEC. 240F. There are authorized to be appropriated to the President specifically to fund expenses incurred in carrying out this subchapter, an amount not to exceed $35,000,000. Amounts appropriated under this section are authorized to remain available until expended.

"DEFINITIONS

"SEC. 240G. As used in this subchapter:

"(1) The term 'conveyance' means a vessel, vehicle, or aircraft.

"(2) The term 'vessel' means any ship, boat, barge, submarine, raft, or other craft or structure capable of being used as a means of transportation on, under, or immediately above the water.

"(3) The term 'vehicle' means any automobile, motorcycle, bus, truck, cart, train, or other device or structure capable of being used as a means of transportation on land.

"(4) The term 'aircraft' means any airplane, helicopter, glider, balloon, blimp, or other craft or struc-

ture capable of being used as a means of transportation in the air.

"(5) The term 'conveyance subject to the jurisdiction of the United States' includes—

"(A) any conveyance documented, registered, licensed, or numbered under the laws of the United States, a State, or any political subdivision thereof;

"(B) any conveyance which is owned or operated by, chartered to, or otherwise controlled by, one or more citizens or residents of the United States or corporations organized under the laws of the United States, a State, or any political subdivision thereof, unless the conveyance has been granted nationality by a foreign nation in accordance with international law;

"(C) any conveyance without nationality or one assimilated to a conveyance without nationality in accordance with international law;

"(D) any conveyance of a foreign nation with which the United States has an arrangement permitting the United States to take the action authorized by a provision of this subchapter; and

"(E) any conveyance which, pursuant to international law, is subject to the jurisdiction of the United States.

"(6) The term 'agency' includes any executive department and components thereof, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Federal Government (including the Executive Office of the President), or any independent regulatory agency.

"(7) The term 'designated foreign country' means any foreign country or countries or geographic area or areas designated by the President in a declaration of an immigration emergency, and may include designated distances from or around a foreign country or countries or geographical area or areas.

"(8) The term 'source' means a place that emits effluent or a sewer outlet.".

(b) The table of contents of the Immigration and Nationality Act is amended—

(1) by inserting after the heading relating to chapter 4 of title II the following:

"Subchapter A—In General", and

(2) by adding at the end of the items relating to such chapter the following new items:

"Subchapter B—Immigration Emergencies

"Sec. 240A. Declaration of immigration emergency.
"Sec. 240B. Emergency powers and procedures.
"Sec. 240C. Travel restrictions and licensing.
"Sec. 240D. Penalties.
"Sec. 240E. Miscellaneous.
"Sec. 240F. Funding.
"Sec. 240G. Definitions.".

○

II

98TH CONGRESS
1ST SESSION

S. 1983

To amend the Immigration and Nationality Act to provide special authorities and procedures for the control of immigration emergencies.

IN THE SENATE OF THE UNITED STATES

OCTOBER 20 (legislative day, OCTOBER 17), 1983

Mr. CHILES introduced the following bill; which was read twice and referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to provide special authorities and procedures for the control of immigration emergencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Immigration Emergency Procedures Act of 1983".

PROVISIONS RELATING TO ENTRY AND EXCLUSION

SEC. 2. (a) Chapter 4 of title II of the Immigration and Nationality Act is amended by inserting at the end thereof the following new sections:

"DECLARATION OF IMMIGRATION EMERGENCY

"SEC. 240A. (a) The President may declare an immigration emergency with respect to any specifically designated foreign country or countries or geographical area or areas, if the President determines that—

"(1) a substantial number of aliens who lack documents authorizing entry into the United States appear to be ready to embark or have already embarked for the United States, and such aliens will travel from, or are likely to travel through, such foreign country or countries or such foreign geographical area or areas; and

"(2) the normal procedures of this Act or the current resources of the Service would be inadequate to respond effectively to the influx of these aliens.

"(b) Within forty-eight hours of the declaration of any immigration emergency, the President shall inform the Speaker of the House of Representatives and the President pro tempore of the Senate of the reasons prompting the declaration. The President shall cause the declaration to be published in the Federal Register as soon as practicable. The declaration shall expire one hundred and twenty days after its proclamation, unless sooner terminated by the President. The President may extend the duration of the declaration for additional periods of one hundred and twenty days each by fol-

lowing the same procedures set forth in this subsection as are provided for the making of the declaration, if, in his judgment, the conditions listed in subsection (a) continue to exist.

"EMERGENCY POWERS AND PROCEDURES

"SEC. 240B. (a) Upon the declaration of an immigration emergency under section 240A, the President may invoke the following emergency powers and procedures with respect to a country or countries or a geographical area or areas specifically designated under section 240A:

"(1) Any United States vessel, vehicle, or aircraft, or any other vessel, vehicle, or aircraft which is owned or operated by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any political subdivision thereof and which is bound directly or indirectly for such designated foreign country or foreign geographical area may be precluded from departing from the United States or may be intercepted while en route and required to return to the United States if feasible or to any other reasonable location until such time as it is feasible to return to the United States, or, if appropriate, allowed to proceed to any other reasonable location.

"(2) The arrival in the United States of any alien who lacks documents authorizing entry into the United

States or who is otherwise inadmissible and is traveling, directly or indirectly, from or through such designated foreign country or foreign geographical area may be prevented by returning or requiring the return of such alien or any vessel, vehicle, or aircraft carrying any such alien to such designated country or area or to some other reasonable location.

"(3)(A) The exclusion or admission to the United States of any alien, regardless of nationality, who is traveling or has traveled to the United States, directly or indirectly, from or through such designated foreign country or foreign geographical area and who is not in possession of a visa or other entry document required for admission to the United States by statute or regulation may be determined under procedures established by the Attorney General (whether by regulation or otherwise), and no such alien shall be presented for inquiry before a special inquiry officer unless such presentation is authorized by the Attorney General pursuant to such procedures.

"(B) Notwithstanding section 208 or any other provision of law, the Attorney General may establish by regulation or otherwise a separate procedure to consider a claim for asylum advanced by an alien whose

admissibility is to be determined in accordance with this paragraph.

"(C) Any alien found inadmissible to the United States pursuant to the procedures established by the Attorney General under this paragraph shall be deported to the country from whence he came. If the Attorney General determines that the alien should not or cannot practicably be removed to the country from whence the alien came, the Attorney General may deport the alien to any country described in section 243(a), without regard to the designation of the alien or the order of countries set forth in section 243(a).

"(D) Any alien admitted to the United States under this paragraph shall be admitted for such time and under such conditions as may be prescribed by the Attorney General, including the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe to insure compliance with the terms and conditions of the alien's admission.

"(E) No court shall have jurisdiction to review the determination of admissibility or nonadmissibility of, or the determination of any claim for asylum with respect to, any alien who is subject to this paragraph.

"(4)(A) Every alien who is subject to the provisions of this section shall be detained pending a final determination of admissibility or pending release on parole or pending deportation if the alien is found excludable, unless an examining officer finds that the alien is clearly and beyond a doubt entitled to be admitted to the United States. Such detention shall be in any prison or other detention facility or elsewhere, whether maintained by the Federal Government or otherwise, as the Attorney General may direct. The Attorney General may at any time transfer an alien from one place of detention to another. No alien shall be released from detention pending a final determination of admissibility or pending deportation if the alien is found excludable, except in the discretion of the Attorney General and under such conditions as the Attorney General may prescribe, including release on bond.

"(B) Any alien applying for admission from a foreign contiguous territory may, in the discretion of the Attorney General, be required to remain outside of the United States pending a final determination of admissibility.

"(C) No court shall review any decision of the Attorney General made pursuant to this paragraph to detain, to transfer, or to release an alien, except that

any person so detained may obtain review, in habeas corpus proceedings, on the question of whether that person falls within the category of aliens subject to detention.

"(D) Nothing in this paragraph shall relieve a carrier or any other person of any liability, duty, or consequence pertaining to the detention of aliens which may arise under any other provision of this Act or other law.

"(5)(A) The President may exempt any facility or emission source, as the case may be, of any department, agency, or instrumentality in the executive branch from applicable environmental requirements pursuant to section 313(a) of the Federal Water Pollution Control Act (33 U.S.C. 1323(a)) and section 1447(b) of the Public Health Service Act (42 U.S.C. 300j-6(b)), section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), section 6001 of the Solid Waste Disposal Act (42 U.S.C. 6961), and section 118(b) of the Clean Air Act (42 U.S.C. 7418(b)).

"(B) If the President finds, and transmits his finding to the Congress, that an exemption is necessary to respond to an immigration emergency, the President may exempt any facility or emission source of, or any action of, any department, agency, or instrumentality

in the executive branch which is directly and substantially related to an immigration emergency from applicable requirements of the National Environmental Policy Act (42 U.S.C. 4331 et seq.), the Coastal Zone Management Act (46 U.S.C. 1451 et seq.), the Endangered Species Act (16 U.S.C. 1531 et seq.), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Historic Preservation Act (16 U.S.C. 470 et seq.), and from the applicable requirements of any other Federal, State, or local law which is intended principally to protect or preserve the environment, wildlife, or aspects of the history or heritage of the United States.

"(C) Except with respect to matters concerning the detention of aliens, an exemption under this paragraph shall lapse upon termination of an immigration emergency. In no event shall any exemption under this paragraph be in effect more than one year. An exemption with respect to matters concerning the detention of aliens shall be in effect until terminated by the President or the expiration of one year, whichever occurs first. During the time period in which an exemption applies the President may, in his discretion, require that a facility or emission source of any department, agency, or instrumentality of the United States nonetheless meet certain environmental standards with-

out thereby creating a private right of action to enforce that requirement.

"(b)(1) During the existence of the immigration emergency, the President may order the closing or sealing of any harbor, port, airport, road or any other place, structure or location which may be used as a point of departure from the United States to such designated foreign country or foreign geographical area, if the President determines such action is necessary to prevent the arrival in the United States of aliens who are inadmissible and who are traveling from or in transit through such designated country or area.

"(2) No person shall cause any vessel or aircraft to depart from or beyond or enter into a closed or sealed harbor, port, airport, road, place, structure, or location during an immigration emergency, unless written permission has been obtained for such departure before the actual departure of the vessel or aircraft.

"(3) Permission for departure from or beyond or entry into a closed or sealed harbor, port, airport, road, or any other place, structure, or location shall be given only for such vessels, vehicles, aircraft which are clearly shown not to be destined for a designated foreign country, or foreign geographical area. The agency designated by the President under subsection (d) of this section shall prescribe the procedures to be followed in requesting departure permission. In

the absence of such procedures, permission may be sought from any agency directly involved in the closing or sealing of the harbor, port, airport, road, or other place, structure or location. A final decision shall be made on any request for departure permission within seventy two hours of the request, unless the person seeking such permission consents to a longer period. If no action is taken on the request within the requisite period, the request for departure permission shall be deemed denied.

"(4) The district courts of the United States shall have jurisdiction to review any final decision denying permission to depart under paragraph (3) of this subsection, except that review may be obtained prior to a final administrative decision with respect to any vessel, vehicle, or aircraft if irreparable injury would occur before a final administrative decision could be obtained.

"(c) The President is authorized to reimburse State and local governments for all costs incurred by such governments during and as a direct result of an immigration emergency declared under section 240A(a), including the costs of providing medical assistance, temporary housing, and other emergency assistance to aliens who entered the United States undetected or who are awaiting immigration proceedings and the costs of providing law enforcement services in connection with such aliens.

"(d) The President may not delegate the authority to initiate those emergency powers of this section which expressly require Presidential invocation, except that the President may designate one or more agencies of the Federal Government to administer the provisions of this section and of sections 240C and 240D. In carrying out these provisions, such designated agency may promulgate regulations and may request assistance from any State or local agency or from any civilian Federal agency. Notwithstanding any other provision of law or any rule or regulation, the President may direct that any component of the Armed Forces of the United States, including the Army, Navy, and Air Force, provide assistance to such designated agency. Any such agency or component of the Armed Forces of the United States may assist in the actual detention, removal, and transportation of an alien to the country to which he is being deported.

"(e) Notwithstanding any other provision of law, any agency or component of the Armed Forces of the United States which is requested or directed to render assistance or services during an immigration emergency is authorized to stop, board, make arrest of persons, inspect, and seize any vessel, vehicle, or aircraft which is subject to the provisions of this section or of section 240C or 240D.

"(f) In providing assistance under this section and sections 240C and 240D, agencies shall have the same authority

as such agencies have for disaster relief under section 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5149).

"(g) The provisions of paragraphs (3) and (4) of subsection (a) of this section shall continue to govern any aliens subject to those provisions, regardless of the termination of the immigration emergency.

"(h) The President may direct the enforcement of subsection (a) of this section beyond the territorial limits of the United States, including on the high seas.

"(i) Nothing in this section shall relieve any carrier or any other person of any civil or criminal liability, duty, or consequence that may arise from the transportation or the bringing of any alien to the United States.

"TRAVEL RESTRICTIONS AND LICENSING

"SEC. 240C. (a) Upon the declaration of an immigration emergency under section 240A, it shall be unlawful for any person to cause any United States vessel, vehicle, or aircraft, or any other vessel, vehicle, or aircraft which is owned by, chartered to, or otherwise controlled by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any political subdivision thereof, to travel or be transported to a foreign country or foreign geographical area designated under section 240A or to within such distance therefrom as the President may

specify, unless prior approval has been obtained from an agency designated by the President.

"(b) Except as provided in subsection (c), the designated agency may by regulation grant prior approval, under such terms and conditions as it may require, for travel to or within a specified distance of a foreign country or geographical area designated under section 240A for certain classes or categories of vessels, vehicles, and aircraft. The owner or operator of any vessel, vehicle, or aircraft not authorized by regulation to travel to or within a specified distance of a designated country or area may apply to the designated agency for a license granting permission for one or more trips to that country or area. The designated agency shall establish by regulation the procedures governing the application for and the approval and revocation of such licenses. The designated agency may authorize officials of any other agency of the United States to accept and transmit applications for licenses to the designated agency or to grant or deny such licenses under standards established by the designated agency.

"(c) No travel to or within such distance as the President may specify from a designated foreign country or area shall be approved under subsection (b) if it appears that such travel may result in or contribute to a violation of any statute or regulation relating to the immigration of aliens to the United States.

"PENALTIES

"SEC. 240D. (a)(1) On or after the day following publication in the Federal Register of the declaration of an immigration emergency, any vessel, vehicle, or aircraft involved in a violation of section 240B(b)(2) or section 240C(a) shall be forfeited and the owner, operator, and any person causing such vessel, vehicle, or aircraft to be involved in such violation shall be subject to a civil fine of $10,000 for each act in violation of such section, except that such vessel, vehicle, or aircraft involved in such violation may be forfeited and the owner, operator, or any other person causing such violation may be subject to a civil fine of $10,000 for each act in violation before such date if such owner, operator, or other person had actual knowledge of the declaration of an immigration emergency.

"(2) All provisions of the customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property,

"(B) the disposition of such property or the proceeds from the sale thereof,

"(C) the remission or mitigation of such forfeiture, and

"(D) the compromise of claims and the award of compensation to informers in respect of such forfeitures,

shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section insofar as applicable and not inconsistent with the provisions of this section, except that duties imposed on customs officers or other persons regarding the seizure and forfeiture of property under the customs laws may be performed with respect to seizures and forfeitures carried out under the provisions of this section by such officers or persons authorized for that purpose by the Attorney General.

"(3) Whenever a conveyance is forfeited under this section the Attorney General may—

"(A) retain the conveyance for official use;

"(B) sell the conveyance and shall use the proceeds from any such sale to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs, with the remaining proceeds, if any, turned over to the United States Treasury;

"(C) require that the General Services Administration, or the Federal Maritime Commission if appropriate under section 484(i) of title 40, United States Code, take custody of the conveyance and remove it for disposition in accordance with law; or

"(D) dispose of the conveyance in accordance with the terms and conditions of any petition of remis-

sion or mitigation of forfeiture granted by the Attorney General.

"(4) In all suits or actions brought for the forfeiture of any conveyance seized under this section, where the conveyance is claimed by any person, the burden of proof shall lie upon such claimant if probable cause shall be first shown for the institution of such suit or action, to be judged of by the court.

"(b) On or after the day following publication in the Federal Register of the declaration of an immigration emergency, any person who knowingly engages or attempts to engage in any conduct prohibited by the terms of section 240B(b)(2) or section 240C(a) shall be guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding $50,000 or by imprisonment for a term not exceeding five years, or both, for each prohibited act, except that the owner, operator, or any other person causing a violation of such section shall be punished by a fine not exceeding $50,000 or by imprisonment for a term not exceeding five years, or both, for each prohibited act before such date if such owner, operator, or other person had actual knowledge of the declaration of an immigration emergency.

"(c) Any alien who willfully violates a condition of his admission under section 240B shall be guilty of a misdemean-

or and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

"(d) The requirements and sanctions imposed by this section shall be in addition to those set forth by other provisions of law.

"(e) Violations of any provisions of this Act committed during the immigration emergency may be investigated by the Federal Bureau of Investigation, the Service, the Coast Guard, or any component of the Department of the Treasury. Notwithstanding any other provision of law or any rule or regulation, assistance in investigating or enforcing this section may be provided, with the approval of the Attorney General, by any agency of the United States, including the Army, Navy, and Air Force, or may be provided by any State or local agency.

"DEFINITIONS

"SEC. 240E. As used in sections 240A through 240D—

"(1) the term 'agency' includes any executive department and components thereof, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency;

"(2) the term 'aircraft' means any airplane, helicopter, glider, balloon, blimp, or other craft or structure capable of being used as a means of transportation in the air;

"(3) the term 'vehicle' means any automobile, motorcycle, bus, truck, cart, train, or other device or structure capable of being used as a means of transportation on land;

"(4) the term 'vessel' means any ship, boat, barge, submarine, raft, or other craft or structure capable of being used as a means of transportation on, under, or immediately above the water; and

"(5) the phrase 'United States vessel, vehicle, or aircraft' include any vessel, vehicle, or aircraft documented, registered, licensed, or numbered under the laws of the United States or any political subdivision thereof.".

(b) The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 240 the following new items:

"Sec. 240A. Declaration of immigration emergency.
"Sec. 240B. Emergency powers and procedures.
"Sec. 240C. Travel restrictions and licensing.
"Sec. 240D. Penalties.
"Sec. 240E. Definitions.".

UNLAWFUL BRINGING OF ALIENS INTO UNITED STATES

SEC. 3. Subsection (b) of section 273 (8 U.S.C. 1323(b)) is amended—

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(1) by striking out in the first sentence "$1,000" and inserting in lieu thereof "$3,000";

(2) by striking out the last sentence; and

(3) by adding at the end thereof the following: "Such sums shall be a lien upon the vessel or aircraft involved in a violation of the provisions of subsection (a) of this section, and such vessel or aircraft may be libeled therefore in the appropriate United States court. Pending the determination of liability to the payment of such sums or while such sums remain unpaid, such vessel or aircraft may be denied clearance, or summarily seized, or both, unless a deposit is made of an amount sufficient to cover such sums or of a bond with sufficient surety to secure the payment thereof satisfactory to the Attorney General.".

INSPECTION BY IMMIGRATION OFFICERS

SEC. 4. Section 235(b) (8 U.S.C. 1225(b)) is amended to read as follows:

"(b)(1) Unless an immigration emergency has been declared, an immigration officer shall inspect each alien who is required to have documentation seeking entry to the United States and shall make a determination on each alien's admissibility.

"(2) The decision of the immigration officer on admissibility of an alien shall be final and not subject to further

agency review or to judicial review, if the immigration officer determines an alien to be an alien crewman, a stowaway under section 273(d) of this Act, or an alien who does not present documentary evidence of United States citizenship, or lawful admission for permanent residence, or a visa or other entry document, or a certificate of identity issued under section 360(b) to support a claim of admissibility.

"(3) Any alien not excluded under paragraph (2) of this subsection who does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to admission shall be detained for further inquiry by a special inquiry officer under section 236.".

AUTHORIZATION OF APPROPRIATIONS

SEC. 5. There are authorized to be appropriated to the President such amounts as may be necessary to carry out the purposes of sections 240A through 240E of the Immigration and Nationality Act, including amounts necessary to reimburse State and local governments under section 240B(c). Amounts appropriated under this section are authorized to remain available until expended.

○

Senator SIMPSON. Now, the first panel consists of Alan C. Nelson, Commissioner, Immigration and Naturalization Service; David H. Pingree, Secretary, Department of Health and Rehabilitation Services; Harvey Ruvin, commissioner of Dade County, FL; and Leonard Britton, superintendent of schools of Dade County, FL.

It is nice to see you, Dr. Britton. I have come to know the other three witnesses. They are most capable and most sincere in the things that they have expressed. I have read your testimony, and I am looking forward to hearing what each of you has to say.

Alan C. Nelson, will you proceed?

STATEMENT OF ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; DAVID H. PINGREE, SECRETARY, DEPARTMENT OF HEALTH AND REHABILITATION SERVICES; HARVEY RUVIN, COMMISSIONER OF DADE COUNTY, FL; AND LEONARD BRITTON, SUPERINTENDENT OF SCHOOLS, DADE COUNTY, FL

Mr. NELSON. Mr. Chairman and distinguished members of the subcommittee, I am pleased to appear before you today to discuss legislation introduced by Senators Lawton Chiles, S. 592, and Paula Hawkins, S. 1725, to deal with the mass influx of aliens into the United States. It is fitting that this hearing should take place in the State of Florida, as the people of this State have witnessed, and been affected by, exactly the type of mass migration addressed by the two bills under consideration today.

The experience of the Mariel boatlift of 1980 and the related influx of undocumented individuals arriving on our shores must be avoided in the future. It is a high priority of this administration that calamities of this nature never happen again.

Since 1981, this administration has advocated legislation which would accord the President the authority to declare an immigration emergency and to invoke special powers in response to a threatened massive influx of aliens with no legal right to enter the United States.

To this end we submitted a bill to Congress in October 1981 which is very similar in major respects to the bills introduced by Senators Chiles and Hawkins. In supporting immigration emergency legislation, the administration has been mindful of the extraordinary nature of the authority which would be vested in the President. We all hope that the authority will never have to be invoked. At the same time, we have been made painfully aware that there are governments which are willing and prepared to use our openness and generosity as weapons against American society.

We know such situations can occur and must be prepared to respond to them, no matter what the cause of the migration. The bills introduced furnish us with the capability to deal with such future threats.

Before I review with the subcommittee our specific recommendations, I want to outline what the administration had done in response to the Mariel boatlift of 1980.

In July 1981, to serve as a deterrent to illegal immigration, we implemented a firm policy set forth in the law, but previously unenforced, that all undocumented aliens of any nationality will

remain in administrative detention pending a determination of their admissibility.

In October 1981, we instituted an interdiction program in the Windward Passage in cooperation with the Haitain Government. This program is a success.

We placed additional resources behind the detention policy and shifted many detainees outside Florida to relieve the crowded conditions that existed at the Krome Service Processing Center. We have made major improvements at the Krome facility.

INS doubled the border patrol force in Florida. In February of this year, we instituted an ongoing patrol along the inlets and intercoastal canals of south Florida to more effectively control the smuggling of aliens.

The task force effort headed by Vice President Bush to hit the smugglers of drugs, as well as aliens, has been very effective.

We have vigorously pursued effective litigation to allow for prompt but fair hearings on the claims made by illegal aliens and to support the actions of the Federal Government.

The results of these policies are clear:

These combined efforts reduced the illegal Haitians arrivals to a mere trickle by comparison with the high rate of 2,300 per month in 1980. Illegal arrivals fell from over 15,000 in 1980 to a mere 134 in 1982. Our actions have saved more than 200 lives by removing Haitians from sinking vessels.

We have done everything within our power to schedule exclusion hearings in Haitian cases. A continuing problem does remain in locating pro bono attorneys to assist the aliens.

The administration has also prepared a contingency plan to respond concretely to any threatened massive boatlift. This is a Federal Government responsibility, but it requires coordination with State and local officials. It is a bipartisan effort, and I want to thank Senators Chiles and Hawkins, as well as Governor Graham, for their cooperation and suggestions.

The many hours of planning are continuing to involve all levels of government—Federal, State, and local—who have come together to develop a more detailed operational plan. We thank all participants for their cooperation in this important process.

However, it is our firm judgment that there remains a critical need to provide the President with special legal authorities in the event of a declared immigration emergency. These provisions have been drawn carefully and narrowly, so as to minimize the disruption of normal and legitimate activities.

We need not sacrifice our liberties in the pursuit of preparedness for an immigration crisis. The Immigration Emergency Act would permit the President to invoke, for periods of 120 days, special powers that are tailored to respond to the types of enforcement problems we experienced during the Cuban flotilla.

We believe that the President should be authorized to declare an immigration emergency if, in his judgment, three conditions are met:

(1) a substantial number of undocumented aliens are about to embark or have embarked for the United States;

(2) the procedures of the immigration laws or if resources of the Immigration and Naturalization Service are inadequate to deal with the situation; and

(3) the expected influx of aliens would endanger the welfare of the United States or of any U.S. community.

The criteria allow the President necessary flexibility.

In considering whether the criteria have been met, both the Secretary of State and the Attorney General would play key roles in advising the President. The President would be required, within 48 hours, to inform Congress of the reasons for involving the emergency provisions. The emergency would automatically end after 120 days, unless specifically extended by the President.

The authority accorded the President under these bills would allow the President to restrict or ban the travel of vessels, vehicles, and aircraft subject to U.S. jurisdiction. The bills would also allow interception of such conveyances, in accordance with international law, if they were traveling to a prohibited place, and permit their forced return to the United States.

During the 1980 flotilla, residents of the United States provided the means of transportation for the Mariel Cubans, and there was little our government could do until the vessels returned from Mariel harbor crowded with undocumented aliens. The travel and transportation bans are aimed at preventing U.S. citizens, residents, and their vessels from again being victimized by an unscrupulous foreign government to inflict injury on the United States.

We believe that reasonable restrictions which are subject to due process limitations are constitutionally permissible under Supreme Court interpretations. The provisions which allow licensing of transportation or travel meet due process requirements in our estimation.

Additionally, the President should be empowered to ban the transportation of aliens on vessels, vehicles, and aircraft subject to U.S. jurisdiction. This transportation ban could apply to nationals of a specific country. This would prevent circumvention of travel restrictions, which would forbid travel to designated places.

For example, this provision would prevent a vessel from traveling to a third country to pick up nationals who had traveled there from a country on which a travel ban had been placed. It would not be necessary under this provision to prove that the national had been picked up in the country of travel ban, as the transportation itself would constitute an offense.

The President would have the option of imposing the transportation restriction alone, rather than imposing the broader travel ban, thus providing far more flexibility.

The emergency legislation also authorizes the President to block the arrival of aliens coming from a designated country. The bills allow the President to bar, in accordance with international law, the entry of foreign-flag vessels, vehicles, and aircraft into the waters, land, or airspace over which the United States exercises any customs, fiscal, sanitary, or immigration jurisdiction.

The bills would also provide for their return to the designated country or some other location. Consistent with our international legal obligations concerning refugees, the undocumented aliens on-

board could also be returned to the country of origin or to some other reasonable location.

Additional provisions would give the Government broad detention powers over illegal aliens who attempt to enter the United States as part of a large-scale influx. Indefinite detention would be allowed if no countrry is willing to accept the alien. The decision to detain would be subject to judicial review through a petition for habeas corpus.

These provisions are backed up by both civil and criminal penalties. Civil penalties up to $10,000 and forfeiture of a seized conveyane are authorized. A person who knowingly engages in conduct prohibited with respect to travel or transportation restrictions is guilty of a criminal offense and may be subject to a fine of up to $50,000 and imprisonment for up to 5 years.

We are well aware of the possible applicability of existing emergency powers which could be invoked in the event of another flotilla. However, those powers, designed for other purposes, are not tailored to address the peculiar problems associated with the uncontrolled mass migration of undocumented aliens.

For example, the triggering criteria of the International Emergency Economic Powers Act [IEEPA] might not encompass all mass immigration situations, and the powers available under IEEPA are broader in many respects and narrower in others than those contained in the Immigration Emergency Act.

Accordingly, this proposed legislation is necessary because of existing emergency powers not being wholly adequate, and the threat of future mass migrations remain real.

Finally, and of great importance, the proposed legislation creates a contingency fund which could be used to cover the costs of carrying out measures needed to deal with the crisis. The existence of such a fund is critical to enable the Federal Government to respond quickly, as necessary, in carrying out tasks and meeting extraordinary costs which have not been otherwise budgeted.

Experience has shown that an immigration emergency will require the full cooperation of Government agencies on all levels. In recognition of this fact, both bills authorize the participation of all Federal agencies, including the Military Services of the United States, in providing assistance during an immigration emergency. State and local governments could also be enlisted in the necessary efforts.

While we all agree that control over immigration is primarily a Federal function, it is clear that cooperation among Federal and the support of State and local agencies may well be the only successful method of dealing with any large-scale migration.

With respect to the cooperation and participation by the military during an immigration emergency situation, the administration will be providing the committee with amendments to clarify how the military would be used.

Under this administration, we are committed that there shall never be another Mariel boatlift such as occurred in 1980. We have implemented certain enforcement policies which have been very effective. We have developed and are in the process of refining, with State and local government cooperation, a contingency plan. We need immigration emergency legislation to give the President the

additional, clear, but restricted authority that is needed for a fully effective response to any future massive arrival of undocumented aliens by sea.

Thank you for your attention.

I would be happy to answer any questions.

Senator SIMPSON. Thank you.

[Material submitted for the record follows:]

Prepared Statement of Alan C. Nelson

I am pleased to appear before you today to discuss the Administration's proposed Immigration Emergency Bill.

In his testimony before this Subcommittee on July 30, 1981, the Attorney General stated that our country had lost control of its borders. There is no better example of this than our failure to prevent, and our lack of readiness to deal with, the 1980 Mariel boatlift. During Mariel, our country experienced the mass influx of some 125,000 Cubans in the space of a few weeks. The need to assimilate such a large number of undocumented aliens, in a short time, placed a tremendous strain on the resources of the communities of South Florida where most of the newly arrived Cubans settled. In addition, some of those who arrived during the Mariel boatlift were criminals who had been expelled from Cuban prisons by a hostile and cynical dictator. Many of these individuals are still in federal custody, pending return to Cuba which has thus far proven impossible.

It is essential that this country regain control of its borders. We can never again permit our immigration policy to be set in Havana or any other foreign capital. To ensure against this, the Administration has prepared detailed contingency plans to permit a swift and firm response in order to help prevent and deal with any future Mariels. Additionally, the Simpson-Mazzoli Bill, which has already passed the Senate and is now being considered in the House, would strengthen and close loopholes in our laws which prohibit bringing undocumented aliens to the United States. Also, the procedural reforms provided by that legislation to streamline exclusion and asylum proceedings would be critical in the event of another mass immigration emergency.

There remains, however, a need to clarify and enhance the President's authorities in the event of a future immigration emergency. The proposed Immigration Emergency Bill has been drafted to meet that need. Its interrelated provisions represent

the result of an intensive study and effort by the agencies concerned. These provisions have been carefully and narrowly drawn, so as to minimize any disruption of normal and legitimate activities. We need not sacrifice our liberties in the pursuit of preparedness. But neither can our government continue to limp along with the legal authorities that proved to be inadequate during the Mariel boatlift. If we are to be responsible, we must learn from our prior painful experiences and act to prevent their recurrence.

For several reasons, existing legislation should be improved and supplemented to help us effectively deal with any future Mariel-type situations. Existing legislation, which is not tailored to this problem, in many cases does not give the President the specific powers needed to deal with another mass immigration emergency. Because of the ambiguity in existing legislation there may be confusion as to what can and cannot be done. This ambiguity could foster needless, time-consuming litigation and hesitation which, in some cases, might interfere with the government's taking necessary action which is believed to be authorized. The existing emergency powers which the President might consider invoking should another Cuban flotilla situation arise are scattered throughout various titles in the United States Code. They were designed for other emergencies and were drafted with those other problems in mind. Therefore, it is not always clear from the face of these provisions that they would apply in a mass immigration problem.

Many different types of problems potentially exist due to poorly tailored or cumbersome existing emergency powers. For example, if another Mariel boatlift were to occur today, the President could very well deem it necessary to restrict and regulate the movement of certain classifications of vessels. Under current authority, he could accomplish this by declaring a national emergency under 50 U.S.C. §191 and ordering certain ports to be closed. The difficulty is that such action could

have consequences well beyond those that are intended or needed to halt a new flotilla. The closure of ports would, needless to say, cause severe hardship for many individuals. The President, however, might have no other choice under existing law if he were determined to prevent another large influx of undocumented aliens to the United States.

The proposed legislation remedies such problems. It sets forth specifically and clearly what actions the President can take. And those actions are carefully tailored to what might be required in an immigration emergency. Consequently, it would assist the government in planning and acting in response to another Mariel crisis or similar situation, and the legality of actions taken would be less subject to question. It would mean that in the context of a crisis those employing emergency powers and those subject to the restrictions would know without any doubt that the powers are being properly invoked and exercised.

The enactment of the proposed Immigration Emergency Bill, for example, would give the President other powers which he could could use to control vessel movement to the minimum extent necessary in the event of a declared emergency, and the closure of ports under 50 U.S.C. §191 to achieve this result would most probably be unnecessary.

The proposed Immigration Emergency Bill also supplements the powers of the President under existing law where necessary. One example of this, which I will discuss in more detail later, is the authority temporarily to exempt emergency related activities from certain environmental restrictions that might otherwise be invoked to block necessary actions.

Thus the bill is a comprehensive one designed specifically for a mass immigration emergency. It would satisfy the need for more comprehensive and clearer authorities to facilitate the prevention and handling of any future crisis.

The Immigration Emergency Bill is arranged in seven sections. The first of the major sections, 240A, concerns the declaration

of an immigration emergency. Under the Bill, the President could declare an immigration emergency if three conditions exist. The President must determine: (1) that a substantial number of undocumented aliens are about to embark or have embarked for the United States; (2) that the procedures of the Immigration and Nationality Act or the resources of the Immigration and Naturalization Service would be inadequate to respond to the expected influx; and (3) that the expected influx of aliens would endanger the welfare of the United States or of any United States community. The President must notify Congress, within 48 hours, of his reasons for declaring an emergency, and publish the declaration in the Federal Register as soon as practicable.

The phrase "a substantial number of aliens" is necessarily inexact. The President could not be expected to have precise estimates of the number of undocumented aliens who may be about to travel to the United States. The term "substantial number" would clearly permit the declaration of an immigration emergency in response to a situation such as the 1980 Cuban boatlift, in which well over 100,000 aliens came to the United States. It is not, however, intended that declarations of emergencies be limited to situations involving the exceptionally large numbers associated with that boatlift. Rather, it is anticipated that an immigration emergency could be declared even if only a few thousand aliens were expected to arrive over the course of several weeks. Consequently, key factors in assessing the need for invoking these emergency powers are the adequacy of the response that could be made using the normal procedures of the Immigration and Nationality Act, the available resources of the Immigration and Naturalization Service, and the short and long term effect the influx would have on the welfare of the United States. On the other hand, while serious problems exist with respect to the usual daily illegal border crossings, such activity would not lead to the declaration of an emergency absent other exceptional circumstances.

The emergency would last for a period of 120 days after its declaration, unless ended sooner by the President. The President could extend it for additional periods of 120 days if in his judgment the conditions previously described still existed.

The declaration of an immigration emergency would enable the President to invoke some or all of the powers specified in Section 240B of the Bill. Under the first of these, the President could restrict or ban vessels, vehicles or aircraft subject to United States jurisdiction from travelling to a foreign country specifically designated by him, unless such travel has been approved under the Bill's licensing provisions. The provision applies to United States conveyances rather than to persons, and individuals would be free to travel to the designated foreign country as long as alternative means, such as foreign common carriers, are used.

This provision will have an impact on the constitutionally protected right to international travel. The Supreme Court has noted, however, that there is a substantial difference between the right to travel within the United States and the freedom to travel outside the United States. While the former is virtually unqualified, the latter is not. As stated by the Supreme Court in Haig v. Agee, 453 U.S. 280 (1981), the right to travel outside the United States can be regulated subject to due process limitations.

The proposed bill provides the requisite due process by establishing a licensing procedure in Section 240C under which travel to the designated country would be approved where adequate safeguards existed to insure that the legitimate interests of the United States are protected. Full judicial review of licensing denials would be available. Under this provision, all common carriers or aircraft, for example, could receive a blanket exemption from travel restrictions if such travel would not result in the arrival of a large number of visaless aliens. The authority to restrict travel is thus tailored to address the perceived harm,

namely, the influx into the United States of a substantial number of undocumented aliens.

Section 240B would also enable the President to ban the transportation, on vessels, vehicles or aircraft subject to United States jurisdiction, of aliens who are of a particular nationality or who are travelling from or through a designated foreign country. Once again, permission for such transportation could be obtained through the licensing provisions of Section 240C. This transportation provision, although related to the previously discussed travel provision, is independently important. The intent of the travel provision, for example, could otherwise be defeated by vessels which pick up, at some third country, undocumented aliens from the designated foreign country. In addition, the transportation provision would assist in law enforcement efforts by permitting enforcement actions to be taken if aliens of the pertinent nationality were found on board, without the necessity of establishing that the vessel had traveled to the designated country. Finally, it would give the President flexibility during an emergency and permit him to invoke only the transportation provision, rather than the broader travel provision, if he believed such action was sufficient.

The need for such powers over travel to designated foreign areas and transportation of undocumented aliens of a particular nationality was clearly demonstrated by the 1980 Cuban boatlift. During the boatlift, residents of the United States provided the means of transportation for the Mariel Cubans. There was little our government could do until the vessels returned from Mariel harbor crowded with undocumented aliens. In any future mass immigration threat, steps must be taken to thwart a boatlift before large numbers of undocumented aliens arrive in the United States. The proposed provisions would enable the federal government to respond more effectively to future mass migrations by giving the President specific power to prohibit residents of the United States from taking actions to aid the aliens in their

efforts to reach our shores. It would not only permit enforcement action to be taken later against those whose actions made a mass migration possible, but would also provide the tools necessary to prevent a Mariel-type situation from occurring in the first place.

Thus, for example, an operator of a vessel could be arrested and his vessel seized before it reached foreign shores if there were probable cause to believe he intended to violate the travel ban. Of course, a vessel operator would be permitted to proceed with his lawful business in the absence of adequate justification to believe he was attempting to violate the law. Moreover, the experience gained by law enforcement authorities during the 1980 boatlift will better enable officials to make the determinations necessary to distinguish legitimate activities from violations of the emergency powers.

Section 240B also permits the President to prevent the arrival in the United States of undocumented aliens coming from the designated country during a declared emergency. The President could bar any vessels, vehicles and aircraft, for which the United States has jurisdiction, including those of a foreign flag, which are carrying such aliens from entering areas over which the United States exercises any customs, fiscal, immigration or sanitary jurisdiction. In addition, consistent with our international legal obligations concerning refugees, the undocumented aliens on a vessel, vehicle or aircraft subject to the jurisdiction of the United States could be returned to the country of origin or to some other reasonable location.

During the Mariel boatlift, once the undocumented aliens were on the boats, little if anything was done to prevent them from arriving on our shores. Under Section 240B, vessels subject to the jurisdiction of the United States can be required to return the aliens to the country from which they came or to some other reasonable location. Also, foreign flag vessels carrying undocumented aliens can be prevented from entering waters over

which the United States exercises jurisdiction. It must be recognized, however, that returning the vessels or the aliens may be impossible if the foreign power is truly hostile to their return. Consequently, stopping vessels from reaching foreign shores in the first place is critical.

Section 240B, as previously mentioned, also authorizes the President to temporarily exempt emergency related activities from environmental restrictions. In addition to referring to existing Presidential exemption authority under the Clear Air, Clean Water, Safe Drinking Water, Resource Conservation and Recovery, and Noise Control Acts, the provision would include new exemption authority with respect to other major federal, state and local environmental requirements. Such new authority could be exercised only upon a Presidential finding, transmitted to Congress, that an exemption is necessary to respond to an immigration emergency. The temporary exemption would lapse upon the termination of the emergency. It could be continued by the President, in increments not to exceed one year, if he determines that circumstances related to the immigration emergency make it necessary. The President could also require that some or all of the environmental standards be met without creating a private right of action to enforce the requirement. This would permit the President to insure that the environment is protected to the maximum extent possible without risking debilitating litigation in the course of an immigration emergency.

It is often necessary during a crisis to act quickly and decisively and to temporarily reorder priorities. During the Mariel boatlift, a Federal District Court issued an injunction on environmental grounds blocking the transfer of Cuban arrivals to Fort Allen, Puerto Rico for processing. The court action came only after millions of dollars had been spent to ready Fort Allen, and seriously disrupted government planning efforts. The eventual transfer of aliens to Fort Allen almost one year later has apparently had no adverse environmental impacts. While

the proposed Immigration Emergency Bill envisions compliance with environmental safeguards to the extent possible, the temporary exemption authority it provides could prevent the government from being thwarted in taking the steps that are essential in responding to the problems that inevitably arise during such a crisis.

In addition, Section 240B of the proposed bill reiterates and clarifies the government's authority to detain illegal aliens who come into custody as a result of an immigration emergency. The bill anticipates that an alien's admissibility to the United States will be determined under the existing provisions of the Immigration and Nationality Act. It makes it clear that the Attorney General has complete discretion to determine whether an alien is to be paroled pending a determination of his admissibility or his deportation if he is found excludable. It also makes clear the Attorney General's discretion to determine where such aliens will be detained, including in federal or state prisons or in local facilities if appropriate. The language of this subsection is intended to permit indefinite detention of an alien found to be excludable if no country is willing to accept him, such as occurred in the Cuban boatlift. This specific authority is necessary so there can be no doubt regarding the power of the United States to protect the public by detaining any or all of the arriving aliens during an emergency, as circumstances warrant.

The Attorney General's decisions under this subsection as to whether or where an alien should be detained are not subject to judicial review. A detained individual can, however, obtain habeas corpus review on the issue of whether he falls within the category of aliens subject to detention under this subsection.

The Supreme Court and several courts of appeals have stated that the Executive Branch has broad authority to detain inadmissible aliens, and have either declined to review or have reviewed such detention on very narrow grounds. The detention powers specified in the bill are, thus, consistent with the Executive

Branch's view of its authority under existing law, and with much of the case law on point. Nevertheless, the ambiguity of the existing statutory framework has, for example, led some courts to intercede themselves into the merits of the detention of those Cuban criminals and misfits who arrived during the 1980 boatlift, despite the fact that the vast majority of the Cubans who arrived were released.

The provisions of the bill would clarify the very limited role to be performed by the judiciary in this regard should a new mass immigration emergency arise, and preclude the courts from ordering the release of aliens found to be unfit or potentially dangerous to society by the Attorney General. In essence, this provision recognizes that the paramount concern is the protection of the American public from the perils posed by individually dangerous aliens or by the uncontrolled release of large numbers of aliens. While the detention of large numbers of aliens for prolonged periods is permitted by this bill and current case law, humanitarian and practical considerations will always dictate the use of common sense in assessing any particular detention situation. The language of this bill is merely intended, in no uncertain terms, to preclude the judiciary from second guessing the Executive Branch's decisions, made in the context of an emergency, as to which aliens should be released and when those releases should occur.

Finally, Section 240B assures that the full resources and expertise of the federal government would be available by permitting the President to designate which agencies are to be responsible for carrying out the emergency provisions invoked, and by allowing him to direct components of the Department of Defense to provide assistance. By specifically permitting the Army, Navy and Air Force to enforce its provisions at the President's request, the bill avoids potential Posse Comitatus Act difficulties.

Section 240C makes it unlawful to violate any travel or transportation restrictions the President may invoke under Section

240B, and it contains the licensing provisions discussed earlier.

Section 240D of the proposed bill provides for both civil and criminal penalties for such violations. A civil fine of up to $10,000 may be imposed for violation of the travel or transportation restrictions, and any vessel, vehicle or aircraft used to violate such restrictions may be forfeited. A person who knowingly engages in conduct prohibited with respect to travel or transportation restrictions is guilty of a criminal offense and subject to a fine of up to $50,000 and imprisonment for up to five years.

The last major provision of the bill, which is contained in Section 240F, is of great importance. This Section authorizes a contingency fund of $35,000,000 which could be used by the President to cover the costs of carrying out measures deemed necessary to deal with the crisis under other provisions of the bill. Our Mariel experience demonstrated that the existence of such a fund is critical. It will enable the federal government to respond quickly and carry out necessary tasks which have not been otherwise budgeted for.

The reasons why large numbers of people desire to emigrate to the United States are apparent and easy to understand. Poverty, lack of opportunity and political instability are widespread throughout the world. The attractiveness of the United States to immigrants proves the success of our experiment in freedom. We have learned, however, that immigration must be a controlled and orderly legal process if the interests of those already here, and those abroad waiting for their chance to come, are to be protected. The pending Simpson-Mazzoli Bill would represent a great step forward in controlling the usual illegal migration experienced by this country and in dealing with the legacy of past illegal migrations.

We must not forget, however, that illegal immigration can also take the extraordinary form of sudden mass movements of people to and across our border. Mariel proved not only that

such emergencies can occur, but also that they can be particularly disruptive unless decisive action is taken in response. We can never again be so unprepared that a foreign government, wanting to rid itself of excess population, can send us its criminals and misfits while we simply stand by. The enactment of the proposed Immigration Emergency Bill would give the President the powers and flexibility needed to prevent and deal with any future mass immigration emergency. Even if the need to invoke its provisions never arises, the enactment of such a law would do much to demonstrate our resolve and discourage a repeat of history. We urge this Committee to give this bill its immediate attention.

Thank you. I will be pleased to answer any questions you may have.

Senator SIMPSON. Mr. Pingree, you may proceed.

STATEMENT OF DAVID H. PINGREE

Mr. PINGREE. Mr. Chairman, on behalf of Governor Graham and the State of Florida, I am pleased to have the opportunity to comment on the provisions of S. 1983 and S. 1725. It is our firm conviction that this proposed legislation would empower the President and the national administration to take the kinds of bold steps which we in Florida know to be required in order to deal effectively with any future immigration emergency.

In my view, the failure of the Congress to enact a comprehensive immigration reform bill makes the passage of the emergency authorities contained in the measures before us today doubly important. Although we have inched slowly along in the development of a contingency plan based upon legal authority currently available, we still are not prepared to deal with the massive immigration of another Mariel. As a result, we are still vulnerable to manipulation by foreign governments and their leaders who use defenseless, innocent people as pawns in games of international intrigue.

Today I will focus upon two general areas of special concern to Florida: the use of State and local facilities and services during any influx; and the potential impact on State and local governments following that initial influx.

Both bills currently provide that aliens shall be detained in any facility, whether maintained by the Federal Government or otherwise, as the Attorney General may direct. Such authority would obviously allow the Attorney General to use State and local facilities.

In addition, both bills allow the Attorney General to request the assistance of any State or local agency in carrying out the provisions of the act. This provision appears to leave discretion to the Attorney General, as well as to the State and local governments.

While the State recognizes the need to have available the resources of all levels of government during an immigration emergency, we feel strongly that the State and/or local governments should be reimbursed for the costs incurred in rendering such assistance. Our concern is well founded in light of our experience during and following the Mariel boatlift, which led to the State of Florida and its citizens having to underwrite approximately $200 million of costs for which the Federal Government never reimbursed them.

The State, therefore, wholeheartedly supports section 240B(c) of S. 1983 which authorized the President to reimburse State and local governments for all costs incurred during and as a result of an immigration emergency.

IMPACTS RESULTING FROM AN IMMIGRATION EMERGENCY

In order to deal effectively with the longer range impacts of an immigration emergency, three issues must be addressed: The process to be used in adjudicating any claims for asylum; procedures for the release of persons from detention; and the waiver of environmental and public health laws.

Florida fervently believes that the only effective way to deal with the problems faced when large numbers of aliens enter this country and ask for asylum is to have a fair and expeditious process in place to handle such claims. There can be no question the current system is unworkable. It did not work 3½ years ago, and it would not work today.

I understand that asylum and exclusion processes are dealt with in the Simpson-Mazzoli legislation now sidetracked in the House. Whether through the vehicle of Simpson-Mazzoli or this legislation, it is urgent that procedures be developed to deal with mass asylum applicants. Any immigration emergency legislation should include a provision establishing fair and speedy processing of asylum claims.

Florida supports the provisions in both bills which provide the Attorney General with the authority to detain, transfer, or release an alien subject to a review in habeas corpus proceedings on the question of whether an individual falls within the category of aliens subject to detention. However, we believe that some issues regarding the release of aliens into the community should also be addressed in the legislation. In this regard, we support the provision in S. 1983 which read as authorizing full reimbursement of costs incurred by States or localities in providing needed services if a decision is made to release individuals from detention.

It is also important that any releases be coordinated with State and local governments so that these individuals do not end up on the street without means of support.

Finally, the legislation should include a provision which mandates that an individual's parole will be revoked and the person returned to Federal custody under specified circumstances, including violation of State or local laws. State and local governments should not be required to house aliens who have been paroled into the community by the Attorney General and are subsequently convicted of State or local violations.

The last issue which I would like to address is the authority included in the legislation to waive Federal, State, and local public health and environmental laws.

The State fully recognizes that the Federal Government must, in an emergency, have the authority to designate facilities for the detention of aliens without being subjected to numerous lawsuits designed to frustrate the use of the facilities. There is, however, a question as to how long such waivers should last. Florida believes that such authority should be limited to the time period for which there is an emergency declaration.

There is a collateral issue related to protection of public health. Specifically, the State of Florida urges that provision be made for strict medical isolation and timely examination of aliens to insure against the introduction of contagious or communicable diseases into the local community and populace.

State and local public health officials are continuing their discussions with Federal officials to obtain substantive improvements in this element of the contingency plan. However, because this matter is of such critical concern, we urge the committee to include a specific provision on public health and protection of the citizenry.

I appreciate the opportunity to bring Florida's comments to you on these bills. Experience has provided valuable lessons for our State, and we appreciate the leadership you have provided in enabling us to share those lessons with others who may face what Florida has faced. If there are questions, I will be pleased to respond.

Also, I would like to include for the record this statement of Governor Bob Graham.

Senator SIMPSON. Thank you. Certainly, it will be included.

[Material submitted for the record follows:]

TESTIMONY PREPARED FOR THE

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION

AND REFUGEE POLICY

OCTOBER 28, 1983

GOVERNOR BOB GRAHAM

STATE OF FLORIDA

DELIVERED BY

DAVID H. PINGREE, SECRETARY

FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

Mr. Chairman, members of the Committee. On behalf of Governor Graham and the State of Florida I am pleased to have the opportunity to comment on the provisions of S. 1983 and S. 1725. These bills contain many desperately needed provisions which would, if enacted, empower the President and the national administration to take the kinds of bold steps which we in Florida know are required in order to deal effectively with another immigration emergency.

I must admit to mixed feelings on this occasion. On the one hand, I am proud to have had the opportunity to work with you over the past two years in trying to frame a bold and fair national immigration policy. On the other hand, I am distressed that after years of study and work the Congress still has not managed to enact the critical reforms needed in our nation's immigration laws. Floridians salute you, Senator Simpson, for having skillfully managed to secure Senate passage of immigration reform on two occasions. We are distressed, however, that the House of Representatives has not yet been willing to deal with this matter.

In my view, the failure of the Congress to enact a comprehensive immigration reform bill makes the enactment of the emergency authorities contained in the measures before us today doubly important. Although it is frightening to comtemplate, the facts are that the statutory basis for action by the federal government in the event of a repeat of the Mariel boatlift is not one bit stronger today than it was in April 1980. We have inched slowly along in the development of a contingency plan based upon legal authority currently available, but this is not enough. We still are not prepared to deal with massive immigration and, as a result, are still vulnerable to manipulation by foreign governments and their leaders who use defenseless peoples as pawns in games of international intrigue.

I want to thank and congratulate Senator Chiles and Senator Hawkins for taking the initiative relative to emergency powers. The fact that Florida's Senators are the authors of the measures before us today reflects the keen understanding they have gained through the bitter lessons of the past three years. We are grateful for their leadership and for your willingness to have your Subcommittee review their legislative proposals.

In my comments today on the bills before us, I will focus upon two general areas of special concern to us in Florida: the use of state and local facilities and services during any influx; and the potential impact on state and local governments following the initial influx.

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Use of State and Local Facilities and Services

Both bills currently provide that aliens shall be detained in any facility, whether maintained by the federal government or otherwise, as the Attorney General may direct. Such authority would obviously allow the Attorney General to use state and local facilities.

In addition, both bills allow the Attorney General to request the assistance of any state or local agency in carrying out the provisions of the act. This provision appears to leave discretion to the Attorney General, as well as to the state and local governments.

While the state recognizes the need to have available the resources of all levels of government during an immigration emergency, we are concerned that the state and/or local governments be reimbursed for the costs incurred in rendering such assistance. Our concern is well founded in light of our experience during the Mariel boatlift. It was the state's understanding, after the declaration of an emergency in Florida, that state and local costs associated with assistance provided to the federal government during the boatlift, would be reimbursed. However, we were later notified by FEMA that only "extraordinary" costs would be reimbursed. This decision resulted in the State of Florida and its citizens having to underwrite approximately $200 million of costs for which the federal government never reimbursed them.

The State, therefore, strongly supports section 240B(c) of S. 1983 which authorizes the President to reimburse state and local governments for all costs incurred during an immigration emergency.

Impacts Resulting from an Immigration Emergency

I will be addressing three issues which the State believes need to be addressed in order to deal effectively with the longer range impacts of an immigration emergency. These include: The process to be used in adjudicating any claims for asylum; procedures for the release of persons from detention; and the waiver of environmental and public health laws.

Processing of Asylum Claims

Florida strongly believes that the only effective way to deal with the problems faced when large numbers of aliens enter this country and ask for asylum is to have a fair and expeditious process in place to handle such claims. There can be no question the current system is unworkable. It did not work three and one-half years ago, and it would not work today.

I understand that asylum and exclusion processes are dealt with in pending immigration reform legislation. Whatever Congress decides to do in that context, it is urgent that procedures be developed to deal with mass asylum applicants. The Select Commission on Immigration and Refugee Policy, in addressing the issue of mass asylum claims, specifically recognized that "long, drawn-out processing of asylum claims is in the interest of neither the potential asylee or the United States." It is imperative that any immigration emergency legislation establish fair but speedy processing of asylum claims.

Release from Detention

Florida supports the provisions in the bills which provide the Attorney General with the authority to detain, transfer or release an alien subject to a review in habeas corpus proceedings on the question of whether an individual falls within the category of aliens subject to detention. However, we believe that some issues regarding the release of aliens into the community should be addressed in the legislation. In this regard, we support the provision in S. 1983 which authorizes reimbursement of state and local costs incurred in a release of an immigration emergency. We read this provision to include the costs incurred by states or localities in providing needed services if a decision is made to release individuals from detention.

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It is also important that any releases be coordinated with state and local governments. In the past there have been unfortunate incidents where individuals were released without the knowledge of state and local officials and without adequate planning for the releases. The results of such a policy impact not only on the community which is faced with addressing the needs of these individuals but also on the individual who may well end up on the street without any means of support.

Finally, the legislation should include a provision which mandates that an individual's parole will be revoked and the person returned to federal custody under specified circumstances. Most important among the reasons for revocation of parole is the violation of state or local laws. State and local governments should simply not be required to house aliens who have been paroled into the community by the Attorney General and are subsequently convicted of state or local violations.

The last issue which I would like to address is the authority included in the legislation to waive federal, state and local public health and environmental laws.

The state fully recognizes that the federal government must, in an emergency, have the authority to designate facilities for the detention of aliens without being subjected to numerous lawsuits designed to frustrate the use of the facilities. There is, however, a question as to how long such waivers should last. Florida believes that such authority should be limited to the time period for which there is an emergency declaration. Obviously, if the President believes that the situation is critical enough to declare an emergency, he should have the tools that he needs to deal with the emergency. However, once the emergency has been terminated, the ability to protect the public from environmental and health hazards must be returned quickly to pertinent state and local governments and agencies.

Florida, in fact, did bring suit against the federal government regarding the conditions at Krome North detention facility here in Miami which resulted in environmental and public health dangers due to severe overcrowding. It should be emphasized that the reason for not decreasing the population at Krome was primarily political in nature. The unwillingness to open other facilities outside of Florida because of political opposition meant that it was easier to continue to use Krome North, even in light of the environmental and health problems, than to open other facilities. To allow the indefinite waiver of such laws, even if done in yearly increments, simply is not acceptable.

There is a collateral issue related to protection of public health. Specifically, the State of Florida urges that accurate provisions be made for strict medical isolation and examination of debarking refugees to insure against the introduction of contagious disease.

State and local public health officials are continuing their discussions with federal officials to obtain substantive improvements in this element of the contingency plan. We will keep the Committee apprised of any progress on this issue and would seek, as appropriate, a statutory mandate if our concerns remain inadequately addressed in the contingency plan.

I appreciate the opportunity to bring Florida's comments to you on these bills. Experience has provided valuable lessons for our state, and we appreciate the leadership you have provided in enabling us to share those lessons with others who may face what Florida has faced. If there are questions, I will be pleased to respond.

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Senator SIMPSON. Mr. Ruvin.

STATEMENT OF HARVEY RUVIN

Mr. RUVIN. Good afternoon. My name is Harvey Ruvin.

It is my privilege to serve as a member of the Metropolitan Dade County Board of County Commissioners. I've also served for better than 2 years as the chairman of the National Association of Counties Special Task Force on Immigration Issues. In that capacity it was my pleasure to appear before you, Mr. Chairman, approximately half a dozen times regarding the Simpson-Mazzoli comprehensive immigration reform legislation.

May I preface my remarks today with a very sincere expression to you, sir, for the courageous and most often thankless, yet nevertheless heroic efforts expended by both you and Representative Mazzoli, your counterpart in the House, over these last few years, regardless of the fate of that legislation, the Nation owes a supreme debt of gratitude to you, sir.

I appreciate this opportunity to be with you today and speak to the Immigration Subcommittee regarding the legislation on immigration emergencies.

I feel it is very appropriate for this subcommittee to hold field hearings here in Dade County, FL. We have had vast experience in coping with one of the largest immigration emergencies ever to have faced the United States, as you all well remember in 1980, over 125,000 Cuban immigrants arrived on our shores as well. This entire influx occurred over a 6-month period, and it is only now, 3 years later, that this community is just beginning to see a true assimilation of the individuals that arrived here 3 years ago.

When looking at legislation dealing with the issue of immigration emergencies, we believe that three issues must be addressed:

First, reimbursement of and the role of the State and local governments; second, that some type of emergency asylum and parole procedure and provisions for release and care of individuals who have arrived must be made and detailed; third, the specific powers and responsibilities of the Federal Government must be clearly communicated so that during the emergency confusion is not sparked and the Federal Government finds itself without an ability to respond to the crisis.

A quick, immediate and firm response is required of the Federal Government when dealing with a crisis situation such as we experienced during the Mariel exodus. We certainly do not want to repeat the type of confusion faced by Metropolitan Dade County, the State of Florida, and the U.S. Government in 1980.

It is my understanding that the proposed legislation offered by both Senators Chiles and Hawkins deals specifically with an immigration emergency and the powers of the Federal Government to respond to such a crisis. It is very appropriate that both Senators from Florida had introduced this legislation.

I would like to illustrate three to four different issues that are faced and dealt with by the legislation at hand. Both bills addressed similar questions such as travel restrictions, waiver of siting laws, length of emergency declaration, reimbursement of State and local governments, and powers of the President. Dade

County generally supports this legislation as necessary and important, to the response by the Federal Government to this emergency.

However, we would like to make the following recommendations:

First, the waiver provision of siting laws.

One of the problems that was experienced during Mariel was the inability to locate sites to house incoming refugees, due to siting laws and regulations, both Senator Hawkins' and Senator Chiles' bills provide for the waiver of these laws. However, we recommend that this provision be restricted to only the time of the declared emergency.

It is our opinion that that period gives the Federal Government sufficient time to locate places for temporary housing, while at the same time not continuing the waiver period for longer than necessary. Had unlimited waiver provisions been in effect in 1980, the Krome Avenue camp here in Dade County may never have reduced its population to an acceptable level.

Second, reimbursement of costs to State and local governments.

Although both bills provide for reimbursement, we support the provisions of Senate bill 1983 that provides authorization for reimbursement for all related costs that are incurred. We feel that arbitrary limitations of $35 million is unrealistic and potentially too restrictive. The State of Florida and Dade County alone spent that much in less than a year as a result of the Mariel boatlift.

Another area of concern to us is the apparent unlimited ability of the Attorney General of the United States to utilize facilities that are not solely Federal. As you are all aware, Dade County cooperated totally with the Federal Government, and prior to the Federal Government's involvement during the Mariel boatlift, to provide necessary facilities to house, process, and feed the incoming refugees.

However, we feel very strongly that the Federal Government must consult and cooperate with State and local governments prior to the utilization of any of their facilities. Also, we are presuming that any utilization of local facilities would be contracted and paid for by the Federal Government.

Finally, it is our opinion that the Federal Government must begin now to work with State and local governments to identify potential sites for refugee centers during an immigration emergency. We feel that the Federal Government must now begin to deal with this issue, prior to any emergency. They would then be better able to cope with the crisis should it ever occur.

Once again, I would like to thank you, Mr. Chairman, and subcommittee members, for providing me the opportunity to present this testimony to you.

I look to you, Senator Chiles and Senator Hawkins, for your continued work and feel very strongly that legislation dealing with immigration emergencies be dealt with by this Congress.

Senator SIMPSON. Thank you.

Dr. Britton.

STATEMENT OF LEONARD BRITTON

Mr. BRITTON. Thank you, Mr. Chairman.

I am Leonard Britton, superintendent of schools for the Dade County Public Schools, and I welcome this opportunity to appear before this subcommittee to provide testimony on proposed legislation to clarify the President's emergency powers during a mass migration. We especially welcome you to south Florida, for I think I can say without fear of contradiction that we have had considerable experience in learning to respond to such events.

For well over 20 years, Dade County has been a major port of entry and/or destination for refugees from all parts of the world. This continuous flow, and sometimes flood, of refugees into south Florida has had a far-reaching effect on our community.

South Florida's experience with mass immigration is closely linked to hemispheric political events, and each new crisis in the New World is likely to impact us in direct proportion to the magnitude of the crisis. Since 1961, south Florida has responded to three mass immigrations.

The first mass immigration into south Florida began with the Castro takeover in Cuba and lasted for nearly 2 years, ending with the missile crisis. During 1961 and 1962, over 153,000 Cubans found their way to south Florida, with an average entry rate of over 7,300 per month. For the 3 years following the missile crisis, exit of refugees from Cuba was severely curtailed, and the entry rate into south Florida dropped to an average of about 800 per month.

The second mass immigration into south Florida was sparked by Castro's offer to "open doors" and let anyone leave who chose to. This exodus, which was channeled through Camarioca, was something of a dress rehearsal for the Mariel exodus, with refugees leaving by all possible means, and Cubans already in south Florida making the crossing to pick up family and friends. During the month that the port of Camarioca was open, from mid-October to mid-November 1965, some 5,000 Cuban refugees entered south Florida.

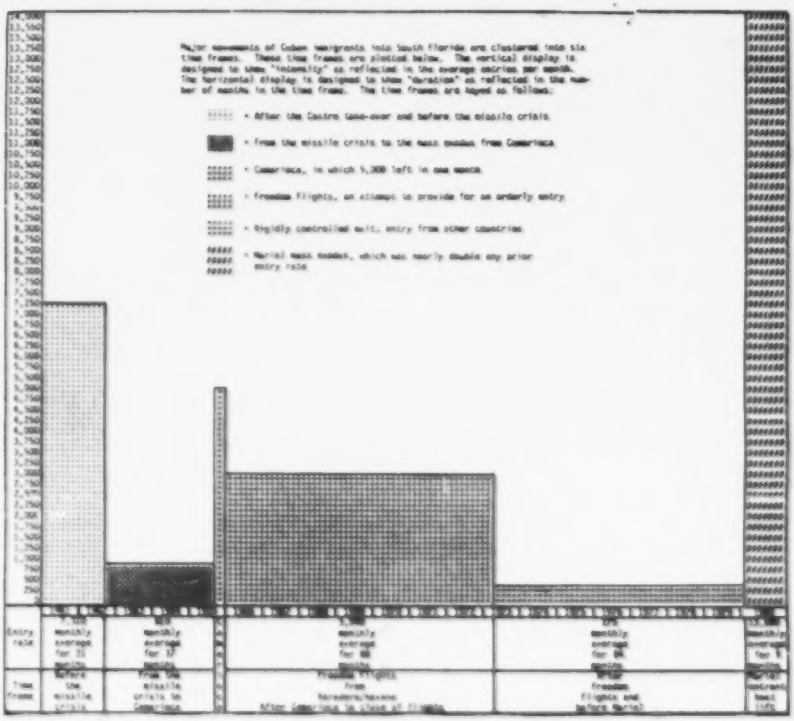
Because of the enormity of the disorder inherent in a mass exodus, President Johnson laid the groundwork for the Freedom Flights, which was to last until 1973 and which accounted for approximately 261,000 new refugees. The airlift was characterized by its twice-daily flight schedule, accounting for approximately 200 refugees per day. The monthly average of new Cuban immigrants during the more than 7 years of freedom flights was approximately 3,000.

The next 7 years, from April 1973 up to the events at Mariel, reflected a relatively low rate of entry of new refugees, with a monthly average of less than 300. Most of these refugees came to the United States through a third country, although in 1978 there was some direct immigration involving ex-political prisoners and families.

This low ebb of new refugees during the 1970's was suddenly shattered in April 1980, when a new wave of refugees came to south Florida from Mariel. Approximately 125,000 such refugees had entered by the end of 1980, representing a monthly average of nearly 14,000. The rate of this exodus was nearly double the highest rate previously established 20 years before. A summary of Cuban entries into south Florida covering the period from 1961 to 1980 is provided.

[Material referred to follows:]

SUMMARY OF CUBAN ENTRIES FROM 1961 THROUGH 1980


Major movements of Cuban emigrants into South Florida are clustered into six time frames. These time frames are plotted below. The vertical display is designed to show "intensity" as reflected in the average entries per month. The horizontal display is designed to show "duration" as reflected in the number of months in the time frame. The time frames are keyed as follows:
• After the Castro take-over and before the missile crisis.
• From the missile crisis to the mass exodus from Camarioca.
• Camarioca, in which 5,000 left in one month.
• Freedom Flights, an attempt to provide for an orderly entry.
• Rigidly controlled exit, entry from other countries.
• Marial mass exodus, which was nearly double any prior entry rate.
Entry rate
Time frame
Before the missile crisis
From the missile crisis to Camarioca
From Freedom Flights from Varadero/Havana
From freedom flights and Marial

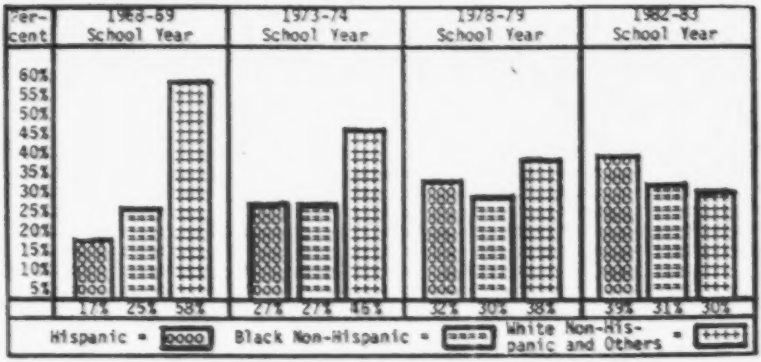
THE IMPACT OF IMMIGRATION ON ETHNIC COMPOSITION IN SCHOOLS

The waves and floods of refugees into south Florida have had a far-reaching effect on the public schools of Dade County. Based on data from the close of the 1982-83 school year, Dade county's multicultural/multilingual population speaks at least 21 different languages and represents more than 45 points of foreign origin. These points of origin include: Argentina, Bahamas, Barbados, Bolivia, Brazil, Canada, Cayman Islands, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, England, Finland, France, French Guiana, Greece, Guatemala, Guyana, Haiti, Honduras, Hong Kong, Israel, Italy, Jamaica, Korea, Mexico, Pakistan, Panama, Paraguay, Peru, Spain, Sweden, Switzerland, Taiwan, Venezuela, Vietnam, and West Germany.

The primary contributor to the shift in ethnic composition of the Dade County public schools has been Cuba, followed by other nations from South and Central America and the Caribbean. During the 1968-69 school year, 17 percent of the population of the Dade

County public schools was of Hispanic origin. Ten years later, in 1978-79, this linguistic group had grown to 32 percent. In 1982-83, the Hispanic population had risen to 39 percent. Current projections indicate that by 1987, Hispanics will comprise nearly 44 percent of the total school population in grades K-12. The shift in ethnic distribution from 1968-69 to 1982-83 is summarized as shown in the chart provided.

[Material referred to follows:]



In addition to this phenomenal growth in Hispanic population from 18 different Spanish-speaking countries, numerous other groups have increased, such as Haitian, Chinese, and Arabic.

From 1974-75 through 1978-79, the 5-year period between the end of the airlift and the massive boatlift from Mariel, the annual rate of entry from Cuba and Haiti was reflected in the Dade County public schools at an average level of 2,200 per year. The student entry rate by year was as follows:

[Material referred to follows:]

Origin	1974-75	1975-76	1976-77	1977-78	1978-79	1979-80 "Pre-Mariel"	1979-80 "Boat-Lift"
Cuba	3,712	1,865	1,293	1,271	1,591	2,965	7,988
Haiti	117	165	288	291	418	336	107
Totals	3,829	2,030	1,581	1,562	2,009	3,301	8,095
							11,396

As may be noted from the summary on page 5, in the spring of 1980 the impact of the boatlift was felt in full force, and raised the 1979-80 total to 11,396 Cuban and Haitian refugee students in a single year. As events evolved, the situation which had developed at Camarioca for a single month in 1965 was being replicated at

nearly three times the Camarioca volume and sustained for nine times the Camarioca timeframe.

On April 28, 1980, 1 week after Mariel opened, 27 Cuban refugee students were enrolled in the Dade County public schools. Three days later, on the last day of April, there were a total of 100 new refugee students. By June 1, the number had swelled to over 1,000. And when the 1979–80 school year ended on June 11, the total had reached almost 6,000, who were being served by already over-taxed resources. When school opened, the day after Labor Day in September 1980, there were over 13,000 refugee students enrolled who had not been in the United States 5 months before. By the end of the first semester of the 1980–81 school year, the number enrolled surpassed 15,000. In addition to 13,500 Cubans, there were almost 800 Haitians, 600 Nicaraguans, 50 Indo-Chinese, 26 Russians, and approximately 25 students from six other countries.

Another way to view the dimension of the problems the Dade County public school faced is to remember that more than 95 percent of the school districts in the United States have fewer than 15,000 students. The closest school district to Dade County geographically to the west is Collier County, which serves Naples, FL, a popular resort area. That district has a total student membership of under 15,000, as is true of Dearborn, MI. So what the Dade County public schools had faced during the Mariel influx is equivalent to what would be faced by Madrid or Berlin public schools attempting to absorb a large American school district in less than 1 year.

Using April 21, 1980, as a point of departure, the spring and summer of 1980, and the 1980–81 school year represented a period of major growth for an extended period of time. From April 21, 1980, through January 1982, some 16,626 Cuban and 1,701 Haitian students, or a total of 18,327, had been processed by the Foreign Student Registration Center. As of April 30, 1983, a total of 18,248 Cuban and Haitian students were on the school system's computerized active refugee file.

THE RESIDUAL EFFECT OF SUSTAINED IMMIGRATION

By the end of 1982–83, a substantial proportion of the boatlift students had gained sufficient control of English that, for the 1983–84 school year, they have been incorporated full time into the academic mainstream program. However, the continual renewal of limited English-proficient students generates a high level of need for special programs and services for such students. This renewal stems from several sources:

(1) Each year many foreign students enter the Dade County public schools. In 1982–83, 9,142 foreign students were processed by the Foreign Student Registration Center. For July–September of 1983–84, there are 3,731 more such students.

(2) As noted earlier, Dade County is not only a port of entry, but also a destination. Many foreign families who enter the United States at other points tend to gravitate to south Florida, where they have ties with others of the same origin.

(3) For a wide range of reasons, a significant number of children of refugee families begin their formal education in private schools

and transfer into the public school system after 1, 2, or even 3 years of nonpublic school education. Annually, between 4,000 and 6,000 students transfer from private schools to the Dade County public schools. Many such students enter the public schools with serious limitations in their control of English.

(4) Many refugee children who came to the United States in recent years as infants are now reaching school age and are entering the public school system.

(5) As the ethnic composition in Dade County shifts toward an increasing percentage of Hispanics, there is a parallel tendency to maintain the use of the home language in daily family affairs. Thus, many students entering the public school in kindergarten are properly classified as limited English-proficient, even though their families have lived in Dade County for a number of years.

As a result of factors such as those mentioned above, and considering the fact that the average limited English-proficient student requires 2 to 3 years to become proficient in English, the cumulative renewal rate of the limited English-proficient population tends to maintain the size of this population, despite the exiting of large numbers of such students into the mainstream instructional program each year. Reports of limited English-proficient students for 1982-83, compared with projections of such students for 1983-84, reflect only a modest decrease in the size of the limited English-proficient population. By grade level, this population is distributed as shown by the attached chart.

Grade	1982-83	1983-84	Grade	1982-83	1983-84	Grade	1982-83	1983-84
K	4,235	3,927	5	1,613	1,597	10	1,293	1,752
1	4,279	3,932	6	1,578	1,414	11	500	719
2	2,723	2,564	7	1,835	1,707	12	210	325
3	1,954	1,871	8	1,408	1,313	Other*	429	0**
4	1,674	1,689	9	1,129	1,076	Total	24,860	23,886

* Includes non-graded exceptional students

** Exceptional students are statistically distributed through the grades

THE FISCAL IMPACT OF SUSTAINED IMMIGRATION

Based on current and cumulative experience, the Dade County public schools must be prepared to continue to absorb refugee and other foreign students on a regular basis and to provide appropriate educational support programs and services. To ensure appropriate programs which will meet the refugee students' educational, psychological, and other adjustment needs, and which will provide appropriate classroom space and transportation to and from school for eligible students, an enormous amount of money is required—sums which are far beyond those required for delivery of regular

instructional programs and services. These include funds for special programs such as intensive English and instruction in and through the home languages while the students are learning English, as well as for the services of bilingual counselors, visiting teachers and psychologists, and other support personnel.

It is important to recognize that the long-range impact of the massive influx of limited English-proficient students irrevocably changes the school district in which they are enrolled. There is an ongoing need for services that are not required in a district which is, for all practical purposes, monolingual.

The impact not only affects the provision of classroom space, equipment, materials, and supplies, but it also makes new requirements on the district to provide long-range bilingual services, both in direct instruction and support services. It requires the ongoing need for the development of informative materials and orientation programs in languages other than English. In short, the cost of providing education for a district impacted with refugee students inevitably is increased, and carries over each year subsequent to the arrival of such students. It is absolutely essential that the Federal Government recognizes its obligation to provide fiscal support to impacted school districts on a continuing basis.

Special programs and services for limited English-proficient students in the Dade County public schools are essentially the same regardless of language background, point of origin, or immigration status, inasmuch as all such students are offered the same kinds of special programs and services on an equal basis. The special programs represent but one of five major cost categories related to refugee and other foreign students in the Dade County public schools, which are in addition to normal operating expenses for students served by the school system. These five excess cost categories are:

One, direct supplementary instruction as described above, which includes special teachers at the school level—344 such teachers for the 1983-84 school year—bilingual program specialists at each of the four administrative areas to support the special teachers, and a supervisor and director at the county level to administer and monitor the programs.

Two, instructional support, which includes bilingual counselors and visiting teachers at the school level, and psychologists at the area level.

Three, relocatable classrooms for students who cannot be housed in the existing facilities.

Four, transportation from neighborhood schools to special centers when educational need requires such attention.

Five, custodial, maintenance, and operational support, including utilities.

These costs inherent in providing special programs and services to refugee and other foreign students have exacted a heavy toll on the resources of the Dade County public schools. A summary of such costs since 1980-81, excluding instruction in and through the home languages, is provided in the chart attached.

[Material referred to follows:]

Cost Category	1980-81	1981-82	1982-83	1983-84
1) Direct Supplementary Instruction	$3,328,250	$5,183,140	$ 6,052,954*	$6,164,664*
2) Instructional Support	313,717	813,338	973,453	1,133,567
3) Relocatable Classrooms	5,489,805	3,200,000	3,200,000	3,200,000
4) Transportation	750,000	175,000	352,210	529,419
5) Maintenance Operations	772,154	1,079,975	1,186,668	1,293,360
Annual Estimates	$10,653,926	$10,451,453	$11,765,285	$12,321,010
Four-Year Total				$45,191,674

*Updated budget report

Mr. BRITTON. To be sure, the entire refugee program costs summarized above were not borne by the Dade County public schools alone. A more accurate appraisal of the fiscal weight of the refugee impact may be derived by comparing the costs and the support provided through Federal resources as shown by this table:

Costs versus revenue	1980-81	1981-82	1982-83	1983-84
Cost projections	$10,653,926	$10,451,453	$11,765,285	$12,321,010
Federal support	4,978,433	6,136,701	5,702,400	4,800,000
Unreimbursed	5,675,493	4,314,752	6,062,885	7,521,010
Total reimbursed				21,617,534
Total unreimbursed				23,574,140

The figures speak for themselves, and the bottom line, so to speak, is that Dade County public schools has been left with an accumulated burden of over $23 million, about half of the cost of special programs and services required by refugee students who have been allowed to enter the United States and who have remained in or gravitated to Dade County.

As we have seen, the number of immigrant students who enter the Dade County public schools on an annual basis, and particularly during crests and sustained high level of entry of immigrants, pose major problems, even for a school system as large as the Dade County public schools. The Dade County public schools is the fourth largest school district in the Nation, and the second largest employer in the State of Florida. It encompasses over 2,100 square miles and serves 27 municipalities and several unincorporated areas. In order that the Dade County public schools may serve its constituency, the school system maintains 175 elementary schools, 46 junior high schools, 24 senior high schools, and 6 special learning centers. To operate these sites requires a staff of approximately 19,700 full-time and 7,500 part-time employees. At the beginning of the 1983-84 school year, the student population served from kindergarten through grade 12 was over 223,000.

The resources of the community and the State already are sorely taxed just to meet ongoing demands for instructional programs and services. While learning to adjust to refugee students' special needs for more than 20 years, the Dade County public schools has developed considerable programmatic and logistical know-how for responding to moderate influxes of refugees with a wide range of linguistic backgrounds. Massive influxes, however, such as those of 1961 and 1962, those of Camarioca and the freedom flights, and those of Mariel pose problems of such a magnitude all students, both those of the incoming group and those who were already in the school system are negatively impacted in efforts to provide instructional programs and services.

Our experience of the last 20 years leads us to the conclusion that once given a mass immigration as a fact, the three most critical factors facing the school system are:

One, to the extent possible, an immediate dispersion of a major portion of the incoming refugees to other parts of the Nation, so the burden of response of educational needs is shared with other communities and other States.

Two, an immediate response in terms of full fiscal support, so the financial burden of providing instructional and support services does not fall on the local community either on a short-term or long-term basis.

Three, a long-term full fiscal response from the Federal Government corresponding to the long-term effects of absorbing large numbers of new refugees.

As the background information we have provided you, and the recommendations we offer, relate to the question of the President's emergency powers in dealing with mass influxes of immigrants, it is clear to us that such powers must be of a nature that they can create mechanisms and command sufficient resources to respond to the critical problems we have posed.

Senator SIMPSON. Thank you. I appreciate your fine testimony.

I think I shall start in your order of presentation for the questions.

Commissioner Nelson, I would like to inquire of you, you are aware of the triggering mechanism for an immigration emergency under this legislation: The phrase is "substantial number of aliens coming across our borders."

Witnesses have suggested a substantial number of aliens without visas are presently crossing our southern borders, a rather significant number as you so ably indicated just 2 or 3 weeks ago, and that under this legislation an immigration emergency might well be even declared today with the present situation on our southern border.

Should this definition in your mind be made a bit more precise?

Mr. NELSON. We realize the difficulty in confronting the legislation to allow appropriate flexibility on the one hand and not create problems in administering the law.

We would certainly be pleased if you could improve on the definition.

It certainly seems the intent of this legislation is not to deal with what might be going on now.

It is a massive, sudden influx.

It certainly is the Mariel type of situation where you had 125,000 coming in a short period of time.

We think the criteria set forth are adequate. They talk about a substantial number, about the impact.

The resources are adequate. It is true we have a massive number crossing the southern border, but we think those can be handled with normal resources.

It is not the interest of the administration to impose emergency legislation unless absolutely necessary.

We certainly welcome suggestions to tighten up the legislation. It seems that this is good. It clearly applies to this massive migration and would not be applied to the current situation.

Senator SIMPSON. Could you briefly describe the situation which you would envision in which this legislation would be most applicable?

Mr. NELSON. Again, I return to the Mariel.

We have all seen that. We saw what happened and the numbers involved and all of the problems involved. I think most of the witnesses here and I have testified to relate to that kind of scenario.

There would be flexibility to handle the other situations. I think the best answer, and the one situation I can identify with, would be the Mariel type of situation.

Senator SIMPSON. I will ask David Pingree: You and Mr. Ruvin have been most helpful in your willingness to come before the subcommittee and testify and add a great deal to both the volume of the record and to the quality of the record.

I will ask you how well do you think the Cuban-Haitian influences are achieving in their attempt to achieve self-sufficiency.

What is your opinion for the future, the dependency rate of refugees in the United States, a totally different rate than anything that we have had to deal with in the legal, undocumented people, but if you could share that with us.

Mr. PINGREE. The assimilation of the process of this group, those that came in 1980 has been fantastic. Similar to what has occurred in the school system, they have demonstrated an ability to adjust and are well on the way to becoming fully assimilated. The dependency rate is quite low in comparison to other groups that have come in the past in earlier waves even though the predictions that some of the Marielitos would be difficult to train in professions and so forth.

In fact, when I testified 1 year ago we indicated the dependency rate was about 30 percent. It was about 50 percent and it continues to drop. I can give you the up-to-date figures on that.

The fact is, as contrasted to even to Indochinese in California, that is a very significant difference. As I indicated before, this community can be proud of the way it has responded in bringing people in and embracing them. Those people who have come can also be proud of their own efforts.

Senator SIMPSON. What kind of structure do you suggest to the subcommittee to provide for the cooperation of Federal and State government in administering the detention and release of undocumented aliens?

Mr. PINGREE. Mandated coordination and cooperation.

We have a volunteer cooperative effort going on.

Since Commissioner Nelson took over, we have had a lot more cooperation than we have in the past.

The structure is one which works on a volunteer basis. That is one of the problems we have had in this part of the country. I don't know if it would be similar in other parts. The number of municipalities in Dade County alone, 27 municipalities, plus the county and plus the State and Federal agencies, makes it difficult to gain consensus.

I think you need some definitions as to, who has to sign off and how long it will take. It is not necessary for everyone to agree. That is not going to happen.

At some point we just need to be able to say "this is it."

[Subsequent to the hearing, the subcommittee received the following:]

STATE OF FLORIDA,
DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,
Tallahassee, FL, November 8, 1983.

Hon. ALAN K. SIMPSON,
Chairman, Subcommittee on Immigration and Refugee Policy, U.S. Senate, Washington, DC.

Dear SENATOR SIMPSON: Thank you again for the opportunity to present Florida's views on the clear need for emergency powers legislation in order to prevent a repeat of the events of 1980. During the discussion you inquired about assimilation of refugees, indicated in part by welfare dependency rates, and the structure for state and local involvement in an immigration emergency.

This state has not experienced a problem with dependency. In fact, for May 1982, the month preceding the federally required termination of cash and medical benefits for individuals in the country 18 months or more, only 32 percent of refugees and Cuban/Haitian entrants in Florida were receiving such assistance. Because of our experience we have recommended to the Office of Refugee Resettlement, as well as to representatives of the Department of State's Bureau for Refugee Programs, that dependency rates and levels of assistance payments be studied to determine whether a correlation exists. In addition, we have suggested that a review of dependency rates encompass more than just the percentage of the refugee population on assistance at any one point in time. Factors concerning length of time on assistance, the immediacy of assistance subsequent to arrival (as opposed to turning to welfare because of the loss of employment), and the availability of jobs in a local community for which a refugee can be hired ought to be considered as well if we are to understand better the relationship between welfare dependency and successful adjustment to life in the new country.

I would also like to outline further my response to your question regarding the structure which should exist to involve state and local governments in emergency immigration planning. It is apparent that any involvement of state and local officials would be substantially different in a state where the influx occurs than it would be in a state which is not experiencing an influx but in which a detention facility is opened. For states which have been identified as likely sites for a future influx, the federal government should be required to develop, in consultation with state and local officials, a plan that clearly delineates the roles of each level of government. Formal agreements should then be entered into which specify those responsibilities. Although Florida and the Immigration and Naturalization Service (INS) have been moving slowly in this direction, I believe that progress would be accelerated if the law required a coordinated process.

In addition, Florida feels strongly that any state faced with an immigration emergency should not be the site for a long-term detention facility. Rather, the use of facilities in the affected state should be limited to short-term screening. This approach would not unreasonably limit the options of the federal government during an emergency and clearly makes sense in light of the numerous other problems facing the impacted community during an influx.

With respect to long-term detention facilities, the governors of the designated states should be contacted. Obviously, the decision to use a particular facility must rest with the federal government. Part of the confusion during the Cuban influx, however, resulted from a lack of understanding as to the services states and localities would be expected to provide and the circumstances under which the provision

of those services would take place. For example, would local law enforcement officials be used if individuals left the camps without permission? How and by whom would medical services be provided to the detainees? It is my understanding that potential sites have been identified but that there is a reluctance to consult with the governors of those states because of the likelihood of negative reaction. I would suggest that it is important to attempt to resolve any issues now rather than waiting to deal with them during an emergency.

I hope that this information has been helpful. Again, I very much appreciate your sensitivity to the problems associated with refugee flow and the enforcement of immigration law. Please let me know if I can be of further assistance to you.

Sincerely,

DAVID H. PINGREE, *Secretary.*

Senator SIMPSON. Certainly, you have an extraordinary vantage point with the work you have been involved in with the Governor and your State activities, and your views are very important to the process.

I have asked Commissioner Ruvin, and as I have said, you and I have discussed the issue of full Federal financing with the subcommittee on numerous occasions. I remember that with gusto.

You have advocated a full Federal fiscal responsibility.

I told you I think refugees who are brought here under Federal law are a Federal responsibility.

Do you see areas where there might be a benefit to the State?

What do you see as the areas which are properly a shared responsibility? What do you see there?

We use the phrase "full Federal responsibility." I understand that when it comes to the early stages of this, but then these people become productive and then they bring benefits to the community.

Are there not some shared responsibilities?

Mr. RUVIN. We have discussed that in the past.

Our feeling is that all of the cost should be directly and fully reimbursed by the Federal Government.

Even though there is no question there are benefits, the energies, the creative sources, the kind of attitude that makes up the divergency that this country has as its basic strength, we in south Florida certainly look to the strength of our economy as partly our location and our international multiple aspects of our community.

Those are benefits that are not held in one area.

When those benefits be that generation or future generation, those benefits have mobility throughout this country.

However, the initial cost really ought to be shared, and the cost should be shared throughout the whole country.

Any alien that becomes naturalized, that becomes listed in the American forces serving his Nation, there are benefits that flow to the entire Nation.

I think the cost ought to be distributed on a national basis if that is a satisfactory answer to your question.

I would like to relate to the prior question you asked concerning assimilation.

Senator SIMPSON. The question of fiscal responsibility is one that you and I will have to visit on again. I do enjoy those times.

Mr. RUVIN. I do not want us to be misled.

We have had a very successful assimilation in Dade County.

That is because we already have a large Cuban-American community here that saw a sense of responsibility and helped in this

assimilation. They found jobs, they found homes and gave them a place to go and lift their family out of poverty.

The next influx we may not be so fortunate.

Senator SIMPSON. I am aware of that.

Mr. RUVIN. I don't think we can evolve in that kind of dealing or relax in that situation.

Senator SIMPSON. I think that these people become employed, become productive, pay taxes, pay real estate taxes, income taxes, all of which benefits the local government, and there comes a time in the process where that responsibility does not remain the Federal responsibility, would you agree with that?

Mr. RUVIN. After assimilation and after the costs have occurred, I would agree.

You do not have the cost of that assimilation any longer.

You asked a question about structure as well. I think it is important there be a structure, a formalized structure put in place, perhaps, utilizing the national public interest groups and the National Governors' Conference, along with the Federal agencies involved, so there is a place where these issues can go to immediately.

Senator SIMPSON. You indicated one of the objectives is smooth community integration, equal geographic distribution.

I would inquire how we might do that and reconcile that with the very understandable desire of family reunification.

Mr. RUVIN. The problems of secondary migration have been major problems for us.

Any attempt at dispersal has failed.

People run into the magnet of the community where the roots are plentiful.

This was undertaken to try to find a solution to this type of problem, by taking the refugees that are now from 50 to 60,000 along the border in small groups and trying to plan close communities in 15 or 20 cities in this country, then to bring in the remainder of them and disperse them, so there would not be one magnet, say, on the west coast; that no matter where they would be placed as new refugees, they will secondarily migrate back to that area.

I think there is also that experiment, and it would be very important, at least in terms of Far Eastern refugees.

Senator SIMPSON. It is an issue the Director of Office of Refugees Resettlement has found extraordinary, and it is very difficult to resolve by any form of activity, and one we would not want to be involved in, the policies of that, if we can avoid it. But it is a very real problem.

Mr. RUVIN. Perhaps incentives of a tax—using the Federal income tax as a basis for providing incentives for people not to remigrate to those areas.

There are a number of avenues that could be utilized.

Senator SIMPSON. Dr. Britton, your testimony was most impressive. It was very graphic, as you defined it.

I think I was interested particularly in the issue of the burden borne by the school system, and if you took that Mariel influx and placed it within the public schools, attempting to absorb that large amount of American persons, citizens in the school district with the language problems, indeed would be extraordinary.

You presented a graphic account of that.

One of the things that these gentlemen all remember, during the course of the two debates in the Senate there was an effort to make English the official language of the United States. I did not want to deal with that on the immigration reform bill, but certainly the great majority of my colleagues was to go forward, and I believe the vote was 65 or 70 to 30.

Twice that occurred, although as I said, I did not want to address it in the Senate debate at that time.

The issue was simply that the English language would be the official language of the United States. I believe Senator Hayakawa provided the amendment.

Anyway, as you grapple with bilingualism, how do you feel about that issue, is it a transitional thing only or as something that should be of a more permanent nature?

Mr. BRITTON. The way we approach it, we begin teaching the students in their native language. This is where they are most proficient.

We put them in classes for 2 or 3 hours a day and through a period of transition get them in English as quickly as we can.

That is required, but we made the opportunity available to these students and to resident students, Anglo-American students, to learn Spanish at the same time, so we could encourage bilingualism.

I think it would be a tragedy to take the students and cause them to do away with their native language.

What we do want is a bilingual student. It doesn't necessarily have to be Spanish. So we make the opportunity available for a foreign student to learn the English language as quickly as possible, and also our English-speaking students to learn another language as quickly as possible.

We even have, at the present time, four of our schools designated as bilingual schools. If the students are Spanish, they must learn English, with about 60 percent of the day spent in English and 40 percent of the day in Spanish.

Senator SIMPSON. Do you find a successful response from the person wanting to learn the second language?

Mr. BRITTON. Yes; the English-speaking students want to learn Spanish.

If I may just make a brief statement in this regard.

I have talked about the short-term and long-term impacts. Perhaps we have been faced with a situation where lemons can be made into lemonade.

One has incurred with the influx of refugees: tremendous. But what has come out of it will benefit this community for generations to come.

We have only seen the beginning of the positive impact of the migration at this point.

Miami is no longer just a city in the southern part of the State of Florida. It is now that I will call the capital of the entire Caribbean area.

The tax and economic base of this community will be benefited over the next 25 years because of the refugees who have come to stay and make this their home.

My basic point was that as our students come in, we need immediate help financially for the direct services needed, and the residual effects may take 3 to 5 years to handle.

We have even given information to people in Washington as to how to work out a formula that might cost $8,000 to $10,000 a student over 3 to 5 years and then cut it off.

Senator SIMPSON. What is your thought about the general proficiency of the Cuban and Haitian children?

What prediction do you make of their future educational performance?

Mr. BRITTON. In general, I would love to take you right out now to some of the schools.

Senator SIMPSON. I see that gleam in your eye.

Mr. BRITTON. I am ready to take you out there to see them talking in English and Spanish and other languages. I can go on through a number of other languages, Russian, Arabic, and Chinese. They are doing well.

We even had a special ceremony a few months ago for Mariel refugees.

I think Senator Chiles was here at that point. We let him know these students came here seriously wanting to learn English and become a part of this culture.

I will close on this statement. I think this is true of the refugees in general: One young girl got up at this ceremony, and she was probably in the fifth or sixth grade, and she addressed the group in wonderful English. She has only been here 1½ years.

She said, "I am proud of my mother and father for having the courage to leave Cuba and come to this country so I can become as educated as I have become."

I think that speaks in response to your question.

As I say, I see great things coming from the people of this community.

Senator SIMPSON. I think we also try not to intrude on their private cultures in any way when they come to this country; we ask only that they embrace our public culture, our Nation, our system of democracy without intruding in any way on their private cultures.

That is our distinctness. That is our great strength as a nation.

Anyway, thank you so much.

I would like to visit one of your schools. I can see you would be an expert guide, and perhaps I can do that. I am very interested in what you are doing and the issue of assimilation. We are going to have to have a hearing on that.

Several fascinating Americans have asked to participate. James Michener speaks of the issue of bilingualism, biculturalism, the issue that we don't address.

Thank you so much. We appreciate it. I appreciate all of you on this panel. Your participation is always very helpful and adds to our record on this very serious effort on some type of control.

Thank you very much. We appreciate it.

On the next panel, please, is Paul Paddock, Florida State chairman, Federation for American Immigration Reform; Carlos J. Arboleya, chairman, Hispanic Affairs Committee; Alvah H. Chapman, chairman, Miami Citizens Against Crime; Mr. Padron is not—was

not able to be with us today. We have got Dr. Raskin, executive director of the Greater Miami United.

So, gentlemen, if you will, the order of the agenda, Mr. Paul Paddock.

STATEMENT OF PAUL PADDOCK, FLORIDA STATE CHAIRMAN, FEDERATION FOR AMERICAN IMMIGRATION REFORM; CARLOS J. ARBOLEYA, CHAIRMAN, HISPANIC AFFAIRS COMMITTEE; ALVAH H. CHAPMAN, JR., CHAIRMAN, MIAMI CITIZENS AGAINST CRIME; AND LAURIE A. RASKIN, EXECUTIVE DIRECTOR, GREATER MIAMI UNITED, MIAMI-DADE COMMUNITY COLLEGE, NEW WORLD CAMPUS

Mr. PADDOCK. Good afternoon, Mr. Chairman, and thank you for the opportunity to present the views of the Federation for American Immigration Reform, known here in Miami, as it is in Washington, as FAIR.

I am Paul M. Paddock, Florida State chairman for FAIR. I have been involved in the immigration reform movement for several years. I would like to begin my presentation by voicing my continuing support, and that of the Federation for American Immigration Reform, for passage of the Simpson-Mazzoli immigration reform bill, S. 529/H.R. 1510. This vitally needed piece of legislation has been blocked from further progress in the House of Representatives by the Speaker of the House Thomas "Tip" O'Neill.

Speaker O'Neill gave as his reason for blocking the bill that there was not constituency for the bill, aside from "editorials in a few liberal newspapers." I would like to assure this committee, and the Speaker, that the constituency for immigration reform is very large, and very supportive of this bill.

Although I know this hearing is not on the Simspon-Mazzoli bill, I would like to offer evidence of that constituency for the record. I ask that the committee accept a brief newspaper article which I recently wrote outlining the congressional situation surrounding this bill. I also ask that I be allowed to include in the record a copy of a telegram sent by 21 prominent Americans, led by former Presidents Jimmy Carter and Gerald Ford, supporting quick action on the Simpson-Mazzoli bill.

I, and FAIR, believe that the Speaker's unilateral action is blocking the Simpson-Mazzoli bill was outrageous and inexcusable. The Simpson-Mazzoli bill represents one of the most generous and least restrictive reforms of our immigration laws ever proposed.

The Speaker of the House, Mr. O'Neill, has made a serious mistake which will cause a great deal of harm and suffering for the American people. That harm will fall most heavily on those who can least afford to bear the burden: American minorities, low-income families and teenagers trying to enter the job market.

We hope that you, Mr. Chairman, and other Members of the Senate, will pressure the Speaker to move the Simpson-Mazzoli bill forward. We in Florida are continuing to express our concerns to our Representatives. Perhaps together we can persuade the Speaker to reverse his obstructionism.

The subject of today's hearing, of course, is not the Simpson-Mazzoli bill, but two proposals to require that the Federal Government

be prepared for and control any future mass immigration situations such as the 1980 Mariel boatlift. FAIR fully supports efforts such as these two bills, S. 592 and S. 1725, to control future flows of illegal immigrants to the United States.

Mr. Chairman, we saw the Carter administration hesitate, and the result was more than 130,000 aliens admitted to the United States. The Reagan administration has not forged ahead to prepare workable and effective contingency plans to avoid another Mariel situation. What if the situation were to repeat itself in 1984? Could we avoid another large group of immigrants suddenly descending on south Florida?

I doubt that we could, or would, prevent another such incident. The planning is not there, the resources are not there, perhaps even the will to act swiftly and effectively is not there. There is a desperate need for a clearly defined plan for action, and neither this administration, nor the one before it, has created such a plan.

Perhaps this vacillation is a function of distance. It is a very long way to Washington from Miami. Although the news media faithfully recorded the large number of entrants, perhaps those in Washington were unmoved by the spectacle.

Certainly south Florida has felt the brunt. The impact has been felt in increased costs, in increased crime, in psychological effects, including fear, suspicion and racial tension.

South Florida has felt the effects of our Government's lack of leadership in many other ways, but looking at the cost involved might make the most impact. Let me briefly discuss the financial effect on south Florida and the Nation of the Mariel boatlift.

On May 6, 1980, then President Jimmy Carter declared that the United States would "welcome the Cuban refugees with open arms and open hearts." Sensing an unparalleled opportunity to minimize the public relations damage his escaping population was causing, Fidel Castro opened the harbor at El Mariel. Before the harbor was closed, 125,314 Cubans and about 7,200 Haitians were admitted to the United States as "Cuban/Haitian entrants—status pending," a status and term never before encountered in immigration law, and one which should be forever buried.

In the 2 years between May 6, 1980, and May 6, 1982, American taxpayers paid out $1,177,143,000. That's $1.2 billion, Mr. Chairman, in just 2 years. This figure was calculated in a most conservative manner. The real figure may be much higher.

Major costs for those 2 years were approximately:

Social services and entitlements, $272 million; public health services, $66 million; food stamps, $121 million; local education, $126 million; and processing and detailing the "entrants," $580 million.

This $1.2 billion was more than we spent on bilateral foreign assistance in 1980 and over three times what the United States spent on immigration law enforcement that same year. And even this huge number is not the complete picture. There are many costs which were not recorded separately for the Mariel entrants, and cost of personnel and equipment shifted from other uses were not available.

I could be more specific in relating this cost, Mr. Chairman, but in the interest of time and efficiency, I simply ask that a copy of

the report be included as an appendix to my testimony in the record.

These high costs are one clear indication that the United States must establish a firm and effective policy to prevent further infliction of harm on the States and local governments which must deal first hand with these problems, both at the time they occur and through later years. The Federal Government, despite protestations to the contrary, does not yet have such a plan.

The two bills being discussed today are a beginning step toward the formulation of such a contingency plan. The bills are actually quite similar in intent, though each uses slightly different language, so I will refer to both without differentiation.

Each bill has five major parts:

First, authority for the President to declare an immigration emergency, and a description of the prerequisites for such a declaration;

Second, special emergency powers made available to the President during the period of an emergency, including travel restrictions, and use of governmental units and programs;

Third, limitations on aliens' ability to enter the United States and on citizens' ability to bring aliens to the United States, including penalties and sanctions for violations;

Fourth, more explicit immigration and immigration-related powers for Government officials than under current law; and,

Fifth, a miscellaneous category, including reimbursement for State and local governments—under last week's amendment to the Chiles bill—funding clauses, and definitions of previously undefined terms.

I would like to briefly discuss each portion of these bills in turn. First, the authority to declare immigration emergencies. It is clear that under current law the President has substantial powers to handle situations which would be classified under this bill as immigration emergencies. Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)) reads:

> Whenever the President finds that the entry of any aliens or of a class of aliens into the United States would be detrimental to the interest of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate. *See Mow Sun Wong* v. *Campbell*, 626 F. 2d 739 (9th Cir. 1980).

The power of the President under section 212(f) is very broad, and gives the President authority, without guidelines, to modify or suspend the immigration laws without congressional oversight. The provisions in these bills give the President guidance—and give the courts guidelines for review—from Congress on when and how these powers of the President should be exercised.

These bill require congressional consultation and public notice of any such Presidential action. The bills provide that necessary balance which makes the separation of powers in our government work effectively, if not efficiently.

Some critics of these bills contend that a President might abuse the powers given by these new sections 240A. I would suggest to the critics that existing section 212(f) already gives the President sufficient power to do anything in these bills with regard to aliens.

Combined with the historical deference of courts to Executive and congressional actions in the area of immigration and regulation of aliens, the powers of the President under section 212(f) are very broad indeed.

These bills are, therefore, an essential safeguard against arbitrary actions by a President. These bills provide immediate and continuing congressional and public review of the President's authority, not only under these new sections 240, but also under existing section 212(f). Therefore, FAIR, which has never been shy about asking for governmental authority to control immigration, supports these wise attempts to provide a public and congressional role in immigration emergencies. This first section of each bill is a valuable addition to the immigration laws.

Second, the special emergency powers made available to the President during the period of an emergency. These new powers vary between the bills, but can be summarized as providing:

The power to stop vessels bearing aliens from entering the United States;

The power to bar excludable aliens from the United States and to return them to their home countries;

Special asylum procedures to insure that the generous asylum processes of the United States are given an opportunity to function;

The detention of aliens pending the determinations of their status or their deportation;

Restriction of judicial review of emergency period immigration determinations, of course, habeas corpus review, which in immigration law terms is expansive, is exempted from restrictions;

Waiving of environmental and certain other governmentally mandated standards for Government facilities during the period of emergency;

The closing or sealing of harbors or ports of entry during an emergency, so that certain vehicles or vessels may be prevented from leaving those areas without prior permission, including judicial review of the determinations of which vehicles or vessels may leave;

The use of Armed Forces of the United States to assist other branches of the Government during these emergencies; and

Authority to interdict vessels on the high seas during an emergency.

Most of these powers are already given under several other Federal laws and regulations. For example, in addition to section 212(f) of the Immigration and Nationality Act which I described a few minutes ago, there are significant judicial and statutory doctrines allowing these steps to be taken under current laws.

For example, the well-known "border search" doctrine, which allows citizens, as well as aliens, to be stopped near the border, has been expanded in the recent case of *United States* v. *Villamonte-Marquez*, 462 U.S. 103 S.Ct. 2523 (1983), where the Supreme Court held that Customs officers may board and search an anchored sailboat on an inland waterway which had access to open water.

Other recent cases have involved the power of citizens to travel to interdicted countries, including Iran during the hostage crisis, and the power of the President to utilize special powers against

aliens during crises, involving politically oriented propagandists and Iranian students.

The toughest questions involve the rights of American citizens. I, like many in FAIR, am a strong defender of the first amendment protections guaranteed all Americans. The freedom to travel is one that is highly prized in our country, and should be maintained. Yet there will always be some who abuse these freedoms for personal profit. In such instances, the courts have long recognized that there may be isolated, rate instances in which the Government may limit that freedom to travel. Given the tremendous long-term impact of illegal immigration, the devastation wrought even in the short-term by the 1980 boatlift, and the courts' historical deference to saving the national sovereignty, it is likely that the restrictions imposed by this section of these bills will be upheld.

Third, restrictions on aliens' ability to enter the United States, and on citizens' ability to bring aliens into the country. Again, existing law is clear. The rights of aliens have historically been less than those afforded citizens. Aliens enter the United States because of our generosity, not because of some right. There is no right under international law for an alien to force his or her way into another country, nor any right for an alien to demand special treatment simply because he or she arrived in the United States with many others.

Even under the international law involving persecution and asylum, no alien has an absolute right to enter the United States. We are required to withhold deportation for certain aliens who would suffer persecution if returned home, but this generosity should not be misconstrued as an open door for all aliens seeking a better life to come to the United States.

Nor are American citizens entitled to bring aliens into the United States without penalty. Section 274 of the Immigration and Nationality Act (8 U.S.C. 1254), prohibits such transporting of aliens.

The recent *INS* v. *Anaya* case, 509 F. Supp. 289 (S.D. Fla. 1980), held that boatowners whose boats were used in the 1980 boatlift could not be prosecuted if they presented the aliens on board their ships directly to the INS. I believe that this case was wrongly decided on a hair-splitting distinction between the words "in" and "into," and should be reversed on appeal or by legislation, as is proposed in both these bills—during immigration emergency—and the Simpson-Mazzoli bill.

This section of these bills does not add much more substance to the current law regarding aliens' entry to the United States. The bills will, however, provide more guidelines and definition to a currently evolving area of the law.

Fourth, more immigration and immigration-related powers for Government officials than under current law. These powers are largely the corollaries of the earlier points. Under these bills, immigration officers, as well as other Government officials, would have clear authority to enforce the powers described in these bills.

And fifth, the miscellaneous sections. We support the concept that the Federal Government should pay the costs of its failure to enforce its laws. These costs, which are magnified in a highly affected area such as south Florida, may at times be nearly unbear-

able to local taxpayers. There is no reason why we in south Florida should have to pay half the cost of the generosity extended by former President Carter.

In the future, if such an event recurs, we believe that the Federal Government, if it is either causing the problem or allowing the problem to occur, should pay the costs associated with the programs involved.

I should point out at this point, Mr. Chairman, that we are not entirely happy with these two bills. On a philosophical level, representing as we do some very strong civil libertarians, we do not like the idea of limiting, even in a necessary and proper manner, the rights of people in the United States.

We recognize, however, that there are circumstances under which some liberties may be harmful, and there is a legitimate role for restricted governmental interference. The well-known example is shouting "fire" in a crowded theater. We saw roughly the same effect when President Carter shouted his 1980 call to Cubans to enter the United States. We would like to be in a position to control any future flows of large numbers of aliens to the United States.

Some of our more specific concerns about these bills involve some of the powers enumerated during emergencies. In particular, we are concerned about the exemptions from environmental protections given during the emergencies on a renewable 1-year basis.

FAIR grew out of the environmental and population/resource movements. Our roots may still run deep on those areas, and we oppose any laws which might cause permanent degradation of the American environment.

We understand the rational behind these proposals. One of the tactics used by opponents of detention of excludable aliens is to sue, using environmental laws, to close relocation centers. Nevertheless, it does not seem to us that the best means for solving that problem is to evade environmental laws.

More effective action would be to either build or repair the camps so that they would not violate environmental laws, or to build more camps and hold fewer people in them at any one time. Of course, the best solution would be to avoid these difficult situations altogether, which is an example of why FAIR was formed.

In summary, then, the Federation for American Immigration Reform supports the intent and much of the language of these bills. The United States must maintain control of its borders, even during the most trying of immigration emergencies. The power to maintain our borders in the fashion discussed today is already present in our immigration laws, but without sufficient detail or clarity to be readily useful, and, in any case, neither of the last two administrations has fulfilled its duty to protect the country by preparing adequate plans or programs in anticipation of future immigration crises.

These bills provide a strong, new measure of congressional and public participation in the decisionmaking and execution phases of Government planning for any new immigration crisis. Critics of these measures should be asked whether they understand what powers are currently available under the immigration statutes and

related laws, and whether they would prefer unbridled and unsupervised executive action over the process outlined in these bills.

As is so common in many immigration debates, much of the criticism of these bills comes from those who offer no constructive proposals themselves. We have often seen this kind of obstructionism from those who profit by continued immigration, as have you, Mr. Chairman.

I have not heard any proposals offered by critics of this bill which would address any of the immigration problems which arose out of the Mariel boatlift.

At FAIR we watch for the apt phrase to capture the mood of the times. Our phrase for this quarter of the year is by Sam Rayburn: "Any jackass can kick a barn down, but it takes a carpenter to build one."

Mr. Chairman, I believe that you are a carpenter and can build a good barn. You have been working on the Simpson/Mazzoli bill, which we all hope will be passed quickly. Now I hope that you will consider what we in south Florida have had to contend with for these 3 years and will take pity on us.

We need this kind of legislation. I hope that you and the Senate Judiciary Committee will consider its passage soon.

Senator SIMPSON. Thank you very much.

[Material submitted for the record follows:]

COST OF THE CUBAN FLOTILLA

Exactly two years ago today, May 6, 1980, one of the most vivid examples of our unorganized and ill-conceived immigration policy was set into motion. On that day, President Carter was making a speech before the League of Women Voters. In response to a question about Cubans trying to leave Cuba, Carter replied that the U.S. would "welcome the Cuban refugees with open arms and open hearts."

Despite Carter Administration efforts to qualify the statement, this comment triggered a massive rush of boats to Mariel Harbor to pick up Cubans wishing to come to America. Boatload after boatload came. By the time Castro finally decided to close Mariel Harbor on September 16, 1980, approximately 125,344 Cubans had come to the United States. Shortly after arriving, all were granted "special entrant" paroles. In addition, about 7,200 Haitians who had come by boat during the same period were given the same status.

Attached is a chronology of events before and after the flotilla.

FAIR CONSIDERS THE COST

Now, two years later, the Federation for American Immigration Reform takes a look at the direct costs of the Cuban flotilla to American taxpayers. FAIR researchers have done an agency by agency survey to try to determine the total costs from Fiscal Years 1980 through 1982.

The report finds that through FY1982, accountable Federal and Florida costs are $1.177 billion so far.

FAIR surveyed the following agencies: Health and Human Services (HHS) (Office of Refugee Resettlement) (The Public Health Service), the Federal Emergency Management Agency (FEMA), the U.S. Emergency Refugee and Migration Assistance Fund (Executive authority), U.S. Department of Agriculture (USDA), the Department of Education (DoE), the Coast Guard, the U.S. Customs Service, the Federal Bureau of Investigation, the U.S. Marshal's Office, and the Immigration and Naturalization Service (INS).

FAIR also incorporated data furnished by the State of Florida on unreimbursed State and local costs.

Care was taken to avoid double counting through interagency reimbursements by excluding any reimbursed costs from an agency's total outlay.

a. HIDDEN COSTS

The figure arrived at here is necessarily incomplete. Direct outlays for the purpose of Cuban-Haitian "special entrants" are the only ones considered. As a result, while additional specific appropriations for an agency like the Coast Guard were included, additional costs for equipment and personnel reallocated from routine operations and used for Cuban-Haitian entrants are excluded.

This is also true for the INS, which diverted hundreds of man-hours from the border and from interior enforcement to the flotilla operation. Similarly, the Federal criminal justice system has spent

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millions of dollars apprehending, prosecuting and incarcerating Cuban criminals.

The Federal government usually shares the cost of AFDC and Medicaid benefits with the states. In the case of recent entrants and refugees, the Federal government picks up the entire cost for the first 36 months. With the exception of Florida, no attempt is made to calculate the Federal share of 100 percent Federally supported cash and medical assistance parallelling state AFDC and Medicaid benefits, child welfare benefits for unaccompanied minors, and social services.

Before FY82 is over, HHS will probably terminate its share of AFDC assistance under an impending rule change that would stop federal reimbursements for these costs after the refugee or entrant has been in the U.S. only 18 months. This change is now scheduled to go into effect in June, and would immediately apply to Cuban-Haitian entrants. California, for example, would have to turn to already scarce General Relief funds (administered by the counties), and the California Department of Health and Welfare estimates a $1.03 million shortfall in funds for all entrants and refugees if the rule goes into effect. (An unknown amount of that would affect Cuban-Haitian entrants.)

Florida asserts that 23,000 career criminals came in among Cuban refugees. While that figure may be high, crime rates soared in Dade County following the flotilla. Murder increased by 52 percent and robbery by 27 percent. While Florida has provided an estimate of costs to its criminal justice system, it only accounts for those contacts with Cuban-Haitian entrants that were identified as such.

Although Haitian and Cuban entrants are eligible for employment assistance from several Labor Department programs (such as the Comprehensive Employment and Training Act (CETA) program, the U.S. Employment Service (USES) and the Targeted Jobs Tax Credit Program), there are no estimates of expenditures under these programs.

b. IDENTIFIABLE COSTS

The most expensive items so far have been social services, health services, education, and the initial cost of the operation.

The discussion here parallels their appearance on the chart attached.

HHS - Office of Refugee Resettlement: $448.1 million

The Office of Refugee Resettlement alone has spent $448.1 million reimbursing states for cash and medical assistance (under Title V of the Refugee Assistance Act, P.L. 96-422), administrative costs and costs associated with unaccompanied minors.

Also included in this figure is $130.9 million for social services, mostly reimbursed to states and localities. In FY82, the $99 million for social services includes $13 million to assist the operation of remaining camps, and $6 million to assist Dade County with schools that have significant Cuban-Haitian entrant populations.

Funding for reception and processing ($176 million) is

spent in a variety of ways: reimbursement to voluntary agencies helping to resettle the entrants; reimbursement to the Federal Prison System, transportation, etc.

AFDC Direct Federal Payments to Entrants in Florida: $11.62 million

Direct Federal payments for AFDC were only calculated for Florida, which has kept good data. Based on a 58 percent reimbursement rate for Florida, the amount provided by the Federal Government for the only period reported by Florida (2/81 - 1/82) was figured on the basis of the Florida contribution (which was reimbursed out of ORR authority listed above rather than directly paid from the Federal Treasury). Direct Federal payments amounted to $11.62 million.

Public Health Service: $66 million

Direct investment outlays by the Public Health Service amounted to $66 million from FY80 to FY82.

FEMA: $195 million

The $195 million spent by the Federal Emergency Management Agency (FEMA) was used primarily to reimburse the Department of Defense for its costs associated with the flotilla operation ($130 million) and to reimburse the U.S. Emergency Refugee and Migration Assistance Fund ($10.7 million).

U.S. Emergency Refugee and Migration Assistance Fund: $20.9 million

The remaining expenditures of the U.S. Emergency Refugee and Migration Assistance Fund (that portion not reimbursed by FEMA), $20.9 million, went primarily to voluntary agencies, to reimbursing city and county administrative costs, to ACTION, and to the Intergovernmental Committee on European Migration (for transportation costs).

U.S. Department of Agriculture: $98 million to $136 million

Foodstamp estimates were arrived at by USDA on the basis of overall social service utilization rates of Cuban-Haitian entrants. The combination of terminated HHS reimbursements in February 1982 and the recognition that these entrants are still using social services at a higher rate than any immigrant population in history led to the total FY81 and FY82 estimates of between $98 million and $136 million.

Department of Education: $25.3 million

Direct outlays (unreimbursed) by the Department of Education amounted to $25.3 million. The adult vocation education grant of $17.6 million is a one-time-only grant under the Adult Education Act.

Coast Guard: $64 million

Coast Guard outlays of $64 million were used primarily for the rehabilitation of equipment used in the flotilla operation.

U.S. Customs and FBI: $1.267 million

Customs and FBI direct expenses only were $0.6 million and $0.667 million respectively.

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The remaining outlays are self-explanatory as listed on the chart.

c. FUTURE COSTS

As it stands now, on June 1, 1982, the Department of Health and Human Services will stop reimbursements to states for their share of AFDC and Medicaid entitlements for Cuban-Haitian entrants. This is part of an overall rule change limiting eligibility for new refugee federal reimbursement from 36 months to 18 months.

What this will mean for "special entrants" in Florida and other states with significant concentrations has yet to be determined. Miami reports that 25,000 of the Cuban refugees are still unemployed and 30,000 are still on public assistance. Florida, like the other states, will have to make up the difference. At this point, Florida reports that 23,000 will no longer receive benefits if Federal aid is cut off. Further, Florida is expecting all of the unreimbursed costs reported on the enclosed chart to be repaid by the Federal Government at some point in the future. Because these entrants are so heavily dependent on social services and entitlements, the states are concerned that the Federal Government is abdicating its share of the responsibility.

The Immigration and Naturalization service has requested $58.735 million for FY1983 to support Cuban entrants who have been institutionalized for mental problems. There is little prospect for release or deportation of these individuals, and therefore they are likely to remain public charges for some time to come.

COSTS OF CUBAN-HAITIAN ENTRANTS SINCE 1980--OUTLAYS
In millions of dollars

DEPT./AGENCY	PURPOSE	FY1980	FY1981	FY1982	TOTAL
HHS-Office of Refugee Rsettlement					
	cash, medical asst., state administrative costs, unaccompanied minors	15.8	90.4	35	141.2
	social services	3.4	28.5	99 (incl. 13 for camps, 6 to Dade County for education asst. under Fascell-Stone amendment)	130.9
	reception and processing		135.0	41 (13 more is being requested)	176
AFDC direct Fed. assistance to Florida 2/81 - 1/82)	cash assistance		6.62		6.62
	medicaid		5		5
other states N/A					
Public Health Service	direct investment	20.4	31.8	13.8 (projected)	66
				page	525.72
				cumulative	525.72

COSTS OF CUBAN-HAITIAN ENTRANTS SINCE 1980--OUTLAYS

DEPT./AGENCY	PURPOSE	FY1980	FY1981	FY1982	TOTAL
Fed. Emergency Management Agency (FEMA)	reimburse DoD, etc.	185	10		195
U.S. Emergency Refugee & Migration Asst. Fund	reimburse VOLAGs, city/county administrations, ICEM, & ACTION)	20.9			20.9
U.S. Department of Agriculture	Foodstamps		27-65(est.) 50 (est. used here)	71 (est.)	121
Department of Education	Discretionary funds to help school districts aid H/C entrant children	3.3	3.85	.550(est.)	7.7
	Adult Vocational Education		17.6		17.6
Coast Guard	Appropriations for Cuban operation	9	42	13 (5.5 pending supp. 1982 request)	64
U.S. Customs Service		.6			.6
FBI		.668			.668

page 427.468
cumulative 952.468

COSTS OF CUBAN-HAITIAN ENTRANTS SINCE 1980--OUTLAYS

DEPT./AGENCY	PURPOSE	FY1980	FY1981	FY1982		TOTAL
DOJ						
U.S. Marshal						
U.S. Attorney		3.34	.6			3.94
DOJ						
	General legal activities	.02				.02
INS						
	money appropriated specifically for H/C entrants		19.527	30.7 (est.)	(FY1983) 58.735(requested for institutionalized Cubans)	50.227
Bureau of Prisons (BoP)	unreimbursed costs absorbed by BoP		2.627	.791		3.418
STATE OF FLORIDA 4/1/80 - 1/31/82						
	education		126.0			126.0
	criminal justice		14.6			14.6
	health services		7.5			7.5
				25.3 (projected, assumes HHS planned cutoff) (includes ed., cr., & health services)	minus -6.3 for 1st Q.	19.0
					page	224.705
					cumulative	1177.173

TOTAL: $1,177,173,000

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[From the Palm Beach Post, Oct. 17, 1983]

IMMIGRATION REFORM BILL DOES HAVE A CONSTITUENCY

(By Paul M. Paddock)

America received a devastating blow by House Speaker Tip O'Neill when he blocked the reform of our immigration laws by killing the Simpson-Mazzoli bill.

When asked by reporters why the bipartisan immigration bill had been blocked, O'Neill stated that the bill did not have a "constituency." A strange reasoning when the U.S. Senate twice has passed the bill, the last time by an overwhelming margin of 76-18. Furthermore, the Gallup poll has shown that 91 percent of the American public want to end all illegal immigration and 80 percent want to place a ceiling on legal immigration.

When reporters pressed O'Neill for a better explanation of his decision, the speaker stated that if the House passed the bill, President Reagan would veto it, thus giving the president and the Republican Party the support it has been looking for among the Hispanic community.

The truth of the matter is that Atty. Gen. William French Smith already has stated that "we've been working on this issue since the beginning of the administration. The president would sign the Senate-passed version of the bill today if it was on his desk."

This does not mean that the House version of the Simpson-Mazzoli bill is perfect, but unless it reaches the floor of the House the needed ainendments to strengthen the bill cannot be added.

To better understand what O'Neill has done to our nation and to South Florida by killing the Simpson-Mazzoli Bill, let me review the four points that the bill set out to accomplish and then judge for yourself if in fact the bill did or did not have a "constituency."

First, to end all illegal immigration into this country. There exist laws today which permit people to come to America, laws which our forefathers followed when they immigrated to this nation. There are today 1 million people who have applied for and received visas to enter the United States legally, but who cannot arrive due to the large number of illegal immigrants who have taken their place. How unfair our current immigration laws must seem to those who have visas and are waiting.

Second, to place a ceiling on legal immigration. To quote the New York Times. "The fundamental purpose of the Simpson-Mazzoli bill was to discourage illegal immigration and encourage lawful entry." The proposed ceiling was 425,000, which is more than humanitarian, considering that it is equal to the sum total of all immigrants taken in by the rest of the world on an annual basis.

We must remember that we are all immigrants and that the purpose of a new immigration bill is not to end immigration into our nation but to set responsible limits, limits that are consistent with today's demographic, economic and social realities.

Third, employer sanctions for those employers who knowingly hire illegal aliens. Most illegal immigrants come to this country not for political reasons but to seek jobs and a better life. There is nothing wrong in wanting to improve one's life, but with the unemployment rate in the United States running close to 10 percent, and 38 percent among the American black youth, should we not take care of the problems here at home first?

The argument has been made that there are many jobs in the United States which U.S. citizens will not take. Yet the average wage of the apprehended illegal immigrants in Los Angeles last year was $5.75 per hour, 70 percent above the minimum wage.

The illegal immigrant is not going after jobs that people do not want, but jobs that people do want. For those situations where a particular skill is required that cannot be fulfilled by a U.S. citizen, the current guest worker program does provide an avenue for companies to bring in foreign workers for a limited time.

The problem exists with those employers who knowingly hire illegal immigrants and pay them b[illegible]ow the minimum wage and then threaten the immigrant with deportation if he [illegible]plains about the working conditions to which he is subjected. As noted by Phil La[illegible]nue on his show last year: "By failing to reform our immigration laws we are seeing the rebirth of indentured servitude in this country."

Fourth, to grant immediate and permanent residency to those immigrants arriving before 1977, and for those arriving between 1977 and 1980, temporary residency for three years and then permanent residency. By killing the immigration bill, O'Neill has created a society that is living within our borders, yet living outside our

laws. For if an illegal is being subjected to an injustice, he has no where to turn for the fear of deportation.

The Washington Post in its editorial of Oct. 10 entitled "The Gutless Congress" best summarizes the situation with Tip O'Neill as follows: "There is an element of bad faith here, since the Senate faced exactly the same choices, dealt with the same lobbies, took the same political risks only to have the House—like Lucy holding the football for Charley Brown—pull back at the crucial moment. . . . They have pleased some, but they have failed the American people by choosing the sidelines when they were needed on the field."

If you disagree with Tip O'Neill and feel that the Simpson-Mazzoli Bill has a "constituency," I urge you to write Tip O'Neill and your congressman: Hon. Thomas P. O'Neill, Speaker of the House, The Capitol, Washington, D.C. 20515; Hon. Daniel Mica, 131 Cannon, Bldg., Washington, D.C. 20515; Hon. Thomas Lewis, 1313 Longworth Bldg., Washington, D.C. 20515.

Senator SIMPSON. Mr. Arboleya.

STATEMENT OF CARLOS J. ARBOLEYA

Mr. ARBOLEYA. Thank you very much for the opportunity to appear here today.

We are pleased to welcome you to Miami. We believe south Florida is the most logical place in the country to hold this hearing on emergency powers for immigration purposes.

In the spring and summer of 1980 we in south Florida welcomed thousands of people who fled Cuba seeking freedom and economic opportunity and we are a richer community for their presence.

However, their sudden arrival created a number of problems in our community mainly because so many people arrived so fast and no one seemed to know what to do. Everybody had to improvise and make up a process as they went along.

When Castro opened the Port of Mariel, Dade County officials realized that processing facilities were going to be needed to handle the constant flow of small boats. On April 21, 1980, such a processing center was set up, manned by a small staff of Federal and local officials and by a large core staff of 1,500 Cuban-American volunteers who showed up day after day to help orient their brethren to a new life.

As the numbers reached 30,000 and at that time, no end in sight, it became obvious that processing could not continue in south Florida. The Federal Government stepped in and camps were set up in other parts of the country.

Ultimately more than 150,000 refugees took part in the Mariel sealift. No other community in the Nation has ever had to absorb into its social and economic fabric as many aliens in such a short period of time as Miami did during the Mariel boatlift.

While the community did a splendid job coping, exhibiting its tremendous resiliency, our community also suffered: Increased crime, now being overcome; social polarization of its communities and neighborhoods, and economic hardships on public agencies as schools, social service programs, et cetera, for which the area remains unreimbursed in large part.

What at first was heralded as a noble exodus, turned sour as media publicity focused on these problems and the presence of a small number of criminals and social deviants among the far greater number of honest, hardworking Cubans.

Today, many of the problems are behind us and the Miami community is proud of its role in this historic event.

Our country must be open enough to accept those who flee their homeland in search of freedom.

But, the entire Nation must share in this responsibility.

The Greater Miami Chamber of Commerce is made up of over 1,200 companies which employ over 600,000 Dade Countians.

Our overriding concern in all matters is the health, success, and well-being of our community.

We feel confident that as a community of resourceful, public spirited people we can handle almost any difficulty that might come along.

But every now and then there comes a problem so big, so complex, and so expensive, that we need help.

This is one.

As you consider proposed legislation, we urge that the following principles be recognized:

(a) The burden of absorbing mass influx should not fall on one area as was the case with Mariel.

(b) Full scale emergency preparedness to spread the impact is necessary.

(c) United States must adopt a master plan for absorption of refugees throughout the United States.

(d) A plan must provide for sufficient instant funding to integrate refugees without negatively impacting the community into which they are integrated.

Thank you for the opportunity to appear I am ready to respond to questions.

Senator SIMPSON. Thank you, sir.

Mr. Alvah H. Chapman, chairman, Miami Citizens Against Crime.

STATEMENT OF ALVAH H. CHAPMAN, JR.

Mr. CHAPMAN. Chairman Simpson and members of the committee, it is a pleasure to welcome you to south Florida and to provide to you a citizen's view of the consequences of uncontrolled and unplanned for mass immigration.

I am Alvah H. Chapman, Jr., chairman and chief executive officer of Knight-Ridder Newspapers, Inc. Today I am here as chairman of Miami Citizens Against Crime, acronym MCAC.

MCAC was founded 24 months ago by the Greater Miami Chamber of Commerce, the Miami-Dade Chamber of Commerce, the Latin Chamber of Commerce, the Citizens Crime Commission of Greater Miami and the Orange Bowl Committee. We have 190 individual members. In addition, over 150 civic, cultural, religious, and advocacy organizations have officially endorsed our objectives as sponsors. Thus, Miami Citizens Against Crime is civicly, professionally, and ethnically representative of our entire community.

The fundamental objective of MCAC is to use the collective weight of the public in assisting in bringing about improvements in the criminal justice system in south Florida. We were convinced from our beginning that this area was in a crime emergency situation and that the criminal justice system here, as then functioning, was unable to cope with it effectively.

We recognized that in the long run the root causes of crime had to be dealt with. Our members individually pledged to work in that direction, and indeed have been doing so in many of their community endeavors aside from Miami Citizens Against Crime. But at that moment, it was existing crime and the forces to cope with it that had to be addressed.

Our citizens were frightened, outraged and dismayed.

FBI statistics had Dade County No. 1 on the crime list, at 11,582 serious crimes per 100,000 population, twice the national average.

The homicide rate in Dade County had increased 120 percent during the previous 6 years.

In 1980 in Florida, there was an aggravated assault every 10 minutes; a robbery every 15.5 minutes; a rape every 1.5 hours; and a murder every 6.3 hours; with Miami as a major contributor.

National media, such as Time magazine and ABC-TV, had focussed on Miami crime, largely with good reason.

We were well aware that the Miami area had a core crime problem not unlike that of other large urban concentrations in our country. Nevertheless, we did not accept crime in any dimension as a "normal" way of life, and we set about attacking that core with all the force which we could bring to bear. That, however, was predominantly a local and State of Florida problem, with which its citizens and officials had to deal; and it was not this core that turned us toward the Federal Government for help.

South Florida had two additional elements in its crime situation which were overwhelming aggravants and which were beyond our control and responsibility. Both—illegal entry of drugs and entry of illegal aliens—were, and are, responsibilities of the Federal Government, responsibilities which were not being met.

The magnitude of the flow of drugs into and through south Florida from outside the U.S. borders as unique and disastrous.

The effects of this drug traffic were pervasive, a major contributor to violent as well as petty crime, and terrifying to the public. It generated crime at all levels and threatened the society we cling to for security, economic progress, and social well-being.

But that is not the subject for today.

The second major aggravant in the south Florida crime situation, as it existed 2 years ago, was the massive entry of illegal aliens.

South Florida has been for a number of years a local entry point for immigrants from Central and South America. And the bulk of them tend to remain in south Florida because of our proximity to their former homes, climatic conditions and the international flavor of our business and cultural community. The vast majority have become useful, loyal and contributory members of our society. Two things, however, had moved that situation beyond our control in 1980 and 1981.

First, as is well known, over 120,000 Cuban illegal aliens entered south florida in the late spring and summer of 1980. As with other immigrants to this area, most have since become useful members of the community. But this has not been without severe strain on many facets of our local society and economy, because of the overwhelming numbers in a short space of time and because virtually all of these persons were destitute financially.

In addition, a small portion of the 120,000, approximately 5,000, were criminals in Cuba and continue to commit crimes here. They are repeatedly in and out of our jails and prisons, and between visits are on our streets committing crimes, disproportionate to their numbers.

At one point, responsible local law enforcement officials estimated that as much as 35 percent of the violent crime in the Miami area was attributable to this group, although that figure has since diminished.

And there is no doubt that this was a deliberate action by Castro and his government. In the midst of the tragedy and chaos of the Mariel boatlift, these criminals and other undesirables were moved out of Cuban prisons and forced into the exodus.

Second, illegal aliens from Haiti were for a period entering south Florida at the rate of approximately 500 per week. There is no evidence that they were a significant contributor to our crime problem. But like the Cuban aliens, they were destitute and had the added difficulty that most did not speak English or Spanish. The burden they put on our social and economic system was severe.

The foregoing describes in summary form our crime situation in 1980 and 1981, particularly as regards Federal responsibilities. Happily, that situation has changed substantially.

On December 29, 1981, four of the leaders of our organization, including myself, traveled to Washington and spoke with Vice President Bush and with Presidential Advisor Edwin Meese. We outlined the plight of our community, urgently requested more vigorous Federal pursuit of their border protection and law enforcement responsibilities in this area and suggested some specifics that should be included in such a program.

On February 5, 1982, President Reagan announced formation of the South Florida Federal Task Force. February 16 Vice President Bush was personally here to publicly announce details of the Federal task force undertakings and its specific goals. He returned again on March 16 to provide an extremely encouraging report on actions already taken to get the task force underway and ancillary moves to strengthen the Federal criminal justice system in south Florida.

These beginnings were tremendously important to this community. The demonstrated commitment of the Federal Government brought a great lift in spirits when badly needed, and it provided the impetus for a new and determined effort to rid this area of crime.

A great deal of progress has since been made at the local and State levels, through a strong coalition of citizens and government. New taxes for crime fighting were requested by the citizens and approved; increased law enforcement and justice system resources were approved by governing bodies; and people from throughout our community and State began to participate in the process of restoring public safety. Little of this would have been possible without the lead of the Federal commitment.

In the ensuing months the efforts of the Federal task force have significantly changed our situation relative to drugs and illegal aliens.

The drug importation apparatus has been severely disrupted, although not eliminated. Much of the associated violence and illegal firearms traffic has been substantially curtailed. That the drug problem still exists, nationwide, is loud testimony that we must redouble our efforts on the demand side, rather than a reflection on the continuing battle to reduce supply. In any event, our community is tremendously encouraged by what has been done thus far, and we are working hard on our part of the plague of drug use.

More to the point of your committee's interests, the work of the Federal task force, as well as other factors, have reduced to a minimum the entry of illegal aliens into south Florida. With our geography, and under normal conditions, some level will undoubtedly always be coming, but we believe the problem is under control at the moment.

I have reviewed with you this brief history to demonstrate what our community has recently been through, from fear and discouragement, to hope and finally to solid accomplishments in reducing the adverse factors bearing upon our social and economic well being and our safety. Many have helped in this progress, including the Congress, and we are very greatful.

Our great worry, however, is that conditions are not always normal, perhaps seldom so in this age. Indeed the current turmoil to the south of us already foreshadows the distinct possibility of additional mass migrations to this area. That of course is why you are here today.

The illegal immigration of the recent past sorely taxed this community, its safety, its economy and its society. The burden fell here, although it was a national problem and a national responsibility. We do not believe that should happen again and we believe it can be avoided.

We therefore endorse in the strongest terms the emergency powers legislation proposed by Senators Chiles and Hawkins.

That legislation embodies several fundamentals that appear to be absolutely essential. They are:

Advance preparation. We all know the problem is lurking on the horizon, with a high probability of occurring, where it will fall and what its burdens will be. We should therefore also know, now, how to deal with it, as a nation; who has the authority and responsibility to do what, specifically; and who will pay. We played the game once, disastrously, trying to write the script as the disaster unfolded.

Offshore interdiction. It is quite obvious that stopping and returning the potential illegal immigrants prior to reaching the United States eliminates a great deal of difficulty and expense, and it also provides a message that may deter others.

Summary exclusion. It has been well demonstrated that our processing and judicial systems, and State and Federal resources, become quickly overwhelmed when the illegal aliens are coming in massive numbers. We must have established legislation that immediately rejects from entry to the United States those who have no apparent legitimate claim for asylum.

Detention in Federal facilities. Illegal immigration is a national problem and a Federal responsibility. State and local governments are not equipped nor financed to deal with it. Further placing in

detention those in a pending status will surely be a significant deterrent to illegal immigration by others.

Like Senator Chiles and Senator Hawkins, we have no desire to close our doors to legitimate immigrants. But neither our laws nor equity can allow our citizens to undertake support of every person who sets sail for our shore.

Let me close by reemphasizing this community's concern with the need for immediate legislative and executive preparation for the next waves. There will be little excuse and serious consequences if we are not prepared.

Thank you for the opportunity to appear today.

Senator SIMPSON. Than you very much.

Ms. Raskin.

STATEMENT OF LAURIE A. RASKIN

Ms. RASKIN. Greater Miami United is in favor of contingency planning by the Federal Government. An effective Federal plan for containment of any "massive wave" of refugees should be in place in order to avoid a repetition of what south Florida has experienced. The training of personnel and the authority for decisions relative to implementation of directives should be established. State and local officials must have clear-cut outlines of actions to be taken by the Federal Government.

The Federal intent and contingency plan should be stated clearly in order to deter both those governments which would solve their internal problems by exporting refugees and those individuals who profit from trafficking in refugees.

Further, we believe that the Federal Government should examine its foreign policy in order to negotiate and resolve problems causing refugees in the country of origin.

Section 240(e) of the proposed act is unacceptable because it denies refugees access to the judicial process. Our experience in south Florida indicates that when refugees are subject to expulsion without due process, community tensions can explode. Furthermore, the prolonged detention of refugees at Krome Center has caused community disturbance, suicide attempts by detainees and regular charges of discrimination in the community when one nationally is released but others are incarcerated.

Reimbursement of State and local government expenditures is essential. Dade County has already been subject to Federal cutbacks in human and health services to citizens and residents. Our local governments cannot absorb further costs. The financial responsibility of the Federal Government should be more clearly fixed than this bill provides, that is, authorizing the President to reimburse costs. The executive branch should be required to reimburse costs.

Senator SIMPSON. Under the present law, the situation you cite is sweeping, and we do not hear people speaking about it much at all. If they would read about it, then those who might feel reluctant to embrace what is being proposed by Senators Chiles and Hawkins may feel differently. That is a very interesting point. It is noteworthy.

What do you see as major benefit that would accrue to the southern Florida area as well as other areas likely to be the impact point of mass immigration if this legislation were to pass?

Ms. RASKIN. There would be several points, many which we touched on today.

One would be as there would be a plan or design for a community as to what should be done.

We noticed really in 1980 when this crisis occurred, no one knew quite how to handle it.

Until the Government declares there is a crisis, there would be specified lines for Miami or any part of the United States where this might take place.

The second point is rather a philosophical one: People of the world would take the United States doesn't intend to enforce the immigration laws.

We have a situation where the United States has been abused by Fidel Castro sending us people we can't accept.

We have noticed people, and where we have noticed a tremendous illegal immigration in this area as well. It would simply bring out into public more specifically the issue of crisis immigration.

Senator SIMPSON. Thank you.

Mr. Arboleya, I think all of us who follow the issues, and certainly you people more than the rest of the people in the United States know that the Cubans who came here during the 1960's have made a very major contribution in southern Florida and the United States.

How do you see the most recent group of immigrants?

How do you perceive their presence?

How do you see their lives and their future developing here?

Mr. ARBOLEYA. Every society needs all kinds of lovers. The mere fact that a large number of Mariel refugees, the exaggered number of the criminals and derelicts, but it is now somewhere in the vicinity of 5,000, we found ourselves with approximately 120,000 hard-working and honest relatives of people who will be a contribution and are already proving to be a contribution to our community.

This is mainly a blue collar force that came in the 1980's. So I say, of society's needs, it is bound, there is nothing wrong with the level of individuals that have entered the country in that boatlift.

On the contrary, there are many success stories I wish the press would bring out in the same fashion they have brought other things out, and let the country know some of these, perhaps less educated, less fortunate individuals, arrived in the 1980's have accomplished in the short time and will accomplish in the future.

Every society is good and bad. We have good and bad, too.

Senator SIMPSON. That is true. I think it is important that accurate interpretations be made of these persons.

I think that is some of what is not reported throughout the land.

How would you describe the business community's response to the Mariel influx?

Mr. ARBOLEYA. The business community's response has been, again, open arms.

At first it wasn't. At first it was a great concern. The confusion was so great and the frustration of such nature I think the confusion prevailed overall.

As the situation itself, we did—we have found that there are—these people are working, honest people, and being accepted rather well, and we had—to be very honest with this issue, it was again overall initial reaction.

However, the reaction now, the matter has been clarified, is they are just as equally well accepted at the educational level as we were in the 1960's when we came in.

When I say at the educational level, I mean the fact they do not have the opportunity to educate themselves, versus those who continued afterward because of a regime that did not provide it.

Senator SIMPSON. Thank you.

Mr. Chapman, your testimony shows a very interesting community effort in dealing with such a diverse group of support systems within that list you shared with us. They were very impressive remarks.

What did you find or your group find—I don't like to get into cerebral stuff—of the psychological effect of the Mariel influx on the citizens of Florida?

In my visits here in the last 4 years, I have had occasion to visit with them. How would you describe them?

Mr. CHAPMAN. Such large numbers create significant problems, not because they are refugees per se, but because of the sheer numbers of them and by the fact they create such a strain on facilities, societal networks, and the economy.

We have been able to absorb a very large number of refugees immigrating over a number of years, although with considerable strain on our community; but the influx of such a large number in such a short time created a lot of problems, and the inclusion number of hardened criminals—approximately 5,000 is a number everybody has agreed upon—created another set of problems.

Senator SIMPSON. We see that the South Florida Federal Task Force has made a very positive impact on reducing crime, especially in the areas of narcotics and illegal immigration.

Do you have any recommendations that you would want to make to perhaps see that task force was even more effective?

Mr. CHAPMAN. We think the task force should be continued in its present form, directly under the Vice President of the United States.

It is extremely effective in coordinating the agencies involved.

I attended a briefing with Vice President Bush of all of the agencies, and when I looked on the wall back of the podium where he was speaking, there was something like 16 or 17 decals representing organizations.

Absent the task force approach and the leadership of the U.S. Vice President, it would be extremely difficult for that group to be as effective as they have been.

Senator SIMPSON. It has been my opinion, and I know George Bush from his present office in the U.S.A., that he is a very capable and effective leader, and he was taken a personal interest in this. He shared that experience with me and we discussed it, and he is most pleased as to what he sees as the effects of this. Obviously you share that view.

Mr. CHAPMAN. Yes, and I would also like to add this.

We believe the task force is doing a commendable job on the supply side of the problem and their work must continue. But citizens of our community and the Nation must face their own responsibilities. We must urge our citizens not to use drugs and not to condone use by those around them, to shun the society of those that do. There is a massive campaign in our community led by a group called Informed Families, allied with our organization, bringing this message to the people of south Florida. Only so much can be done on the supply side. The demand side is really the question.

Our citizens must take a stance on the terrible consequences of drug abuse and join in a solution to the problem.

We are seeing progress and we are encouraged by that. But we must not relent on continued protection of our border, a Federal responsibility, against the introduction of drugs and illegal immigrants.

Senator SIMPSON. Thank you.

I know you are a pinch-hitter so I can't—I had a couple of questions for Mr. Padron, but let me first thank you for coming. We know of the efforts of the Greater Miami United and Miami Dade Community College for its fine sound system on short notice.

I appreciate that. Thank you so much.

In the testimony, as I say, I have read the written testimony of Mr. Padron, who is from Greater Miami United. There is an emphasis that foreign policy solutions are desirable in addressing mass migration.

What U.S. foreign policy initiatives do you think might perhaps have been made to avoid the Marielito boatlift?

If your organization has a view on that, will you share it with us?

Ms. RASKIN. I am sure we support any of the economic development programs like the Caribbean Basin Initiative as a way of strengthening the country.

Senator SIMPSON. We heard some interesting testimony some months ago on that attempt to increase the economic development in the Third World and other countries. An interesting fact arises as you do that: There is an increase in the economy of that country. It creates a generation of capital, where individuals accumulate more capital, and then they want to migrate out.

At least in the short term, that is a very real dilemma. Here comes the capital, here comes the earning power and now I am going to move on.

It is interesting. In the long term, yes, development is beneficial. But not in the short term. That is interesting.

Well, I think I had another I was going to inquire of you as to an alternative to detention.

What might be suggested as an alternative to detention of refugees during a mass migration? Have you thought on that?

Ms. RASKIN. I think short-term detention is not something we are concerned about.

It is the long-term incarceration, people not knowing when they are going to be released.

I think the local government agencies are working on a program that would provide homes and relatives, so people could be paroled into custody of people that are here.

Senator SIMPSON. I think I will submit some other questions perhaps on the record. I will do that.

I think that Senator Chiles and Senator Hawkins have arrived.

Let's take a 5-minute break, and we will return and we will hear their remarks; then we will have the third panel.

[Recess taken at 2:50 p.m. to 3:07 p.m.]

Senator SIMPSON. We do have a very limited time, and we have a large panel for the last panel.

We shall proceed. I want to again acknowledge the presence of your two Senators and my colleagues from the U.S. Senate and tell you that their urging and their continual interest should be inspirational for you to watch.

They both have harassed me unmercifully. They are encouraging me to the limit. They both work hard, and I have enjoyed them both, and they have been extremely helpful to me, and they have been very patient in placing this legislation here for you now instead of placing it in the Immigration Reform and Control Act, and it was a great gesture on their part.

I think I will recognize the Senator, and if you have any comment you might wish to make, Senator Chiles, you are welcome to do so at this time.

STATEMENT OF HON. LAWTON CHILES, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator CHILES. Mr. Chairman, I commend you and the subcommittee for calling this hearing. You have worked hard and successfully to correct the problems in our present immigration laws. The Senate has approved S. 2222, the immigration reform proposal you put together. Hopefully, we will see the House move on counterpart legislation before we finally adjourn. I commend you for a job well done; and, if final passage comes about, you can take comfort in the knowledge that our Government will be in better control of our borders with respect to undocumented aliens.

I share your relief that a major part of the effort has been taken care of with the Senate passage of legislation which addressed the problems of illegal immigration. By controlling the magnet of illegal jobs and by streamlining immigration appeals procedures, S. 2222 will help stop the steady flow of illegal immigration. But there is still work to be done on another important immigration issue, and that is ensuring that the United States has the ability to prevent any future flood of aliens, similar to what happened during the 1980 Mariel boatlift.

I was outraged over the illegal immigration crisis, triggered by Castro, that has disrupted south Florida. I saw my State struggle to bring some kind of makeshift order out of the chaos visited upon us. Education and public health services were strained beyond their capacity. State, county, and city budgets were drained. Stories of human suffering, tragedy, fear, and crime became everyday topics of conversation in Florida. Business declined, our people lost jobs, tourists were discouraged by the news of violence, neighbors began to distrust neighbors, many were afraid to leave their homes, and many more armed themselves to do so. As a consequence, the Miami area is now known as a "gun belt."

Needless to say, Floridians were disgusted—not only with the situation itself, but even more with the Federal Government's sluggish response. Florida worked here in Congress, on the State and local level, with Democrats and Republicans, with two administrations just to get the Federal Government to acknowledge its responsibilities. We had some successes, but the job's not over.

Mr. Chairman, I know that you are familiar with the effects that the Mariel boatlift and the influx of undocumented Haitians had on south Florida. In a sense, the Mariel boatlift was similar to a war. It was a war which Castro fought by using people who simply wanted to be reunited with their families in America. Castro used those people as unwitting pawns, and used their desire for freedom as a way to empty his jails and his asylums. His cynical actions were in fact the deliberate and premeditated act of invasion by a foreign country. Our Government did not have the ability to respond to his form of war. Instead of a contingency plan in place which could be used to respond to events and take control of the situation, all we had was confusion. Estimates as to the costs to the U.S. taxpayer for what happened in south Florida run to at least $700 million. It is essential that we prevent such an invasion from ever taking place again.

Since the Mariel crisis, I have joined with other Floridians to get the Federal Government to respond to the crisis which its lack of policies created, and to make sure that another Mariel would never occur. We have had some successes on the first front, although not as many as we would like to have seen. On the second front, it became increasingly clear to me that unless the U.S. Government made it clear that it had both the tools and the determination to prevent another Mariel-type situation from happening in the future, we would end up encouraging the Castros of this world to wage war on us once again.

Accordingly, during the Senate's consideration of S. 2222, I was prepared to offer the administration's proposal on immigration emergencies as an amendment to the bill. However, after talks with the Justice and State Departments, and with you, Mr. Chairman, I agreed to defer my amendment so that S. 2222 could move along.

In the course of those discussions, we were able to get the Justice Department to set out on the record those provisions in existing law which would enable the U.S. Government to take the steps necessary to prevent another Mariel. I would like to submit that listing of authority which the Justice Department provided to us as part of the legislative record we are building today. I also think that it is worth spending a few moments mentioning some of those provisions:

A provision in title 50, United States Code, enables the Treasury Secretary, pursuant to a declaration of a disturbance in our foreign relations by the President, to inspect and even take possession of any ships, foreign or domestic, in our territorial waters.

A provision in title 8, United States Code, for the forfeiture and seizure of any vehicle or vessel used to bring illegal aliens into the country.

Another provision enables the President to suspend the entry of aliens or classes of aliens into the United States if their entry

would be detrimental to the interests of the United States. This could be used to stop any vessel carrying illegal aliens.

Yet another provision of current law establishes penalties for anyone who tries to secretly bring illegal aliens into the country.

However, I agree with the administration that it makes sense for Congress to establish additional powers which could be triggered in an immigration emergency situation. By doing so, we accomplish several important objectives. First, we make sure that a single body of authority, approved by the Congress, is in place. Second, we can eliminate any inconsistencies in existing law, and clarify any provisions which seem vague or obsolete. Third, by taking action, we put the Congress and the Federal Government on record in its determination to be in control of any immigration emergencies. By doing so, we send a signal both to the American people and to those in other countries that the Federal Government will not stand idly by in the future.

Mr. Chairman, by listing these authorities, I do not want to suggest that there are no other provisions in current law which could be used by the Government to respond to immigration emergencies. I believe that it is important, however, that we make it clear on the record at this point that there is authority to respond to immigration emergencies and that the admininstration has developed a contingency plan based on current law to deal with such emergencies.

The proposals before us today is a revision of the earlier administration proposal which I had planned in connection with S. 2222. Let me offer some comments on the new proposal. Just as before, I think it is imperative that we strengthen our present authority and so, again, I will be more than willing to support the administration's proposal in its revised form.

The accompanying letter by the Attorney General reassures me that, though there is sufficient authority at present to support a contingency plan of decisive action by the President in the event of another mass influx of immigrants, the proposed new authority would be less cumbersome and less likely to lend itself to abuse than the broader-sweeping powers of the current National Emergency Act.

I am also delighted with the promise that the Immigration Emergency Act will allow the President to respond immediately to immigration crises and that it provides the President with the necessary tools to protect this Nation's borders.

The administration's new draft appears to be tightly drawn and better tailored to do the work of controlling our borders in times of threatened mass entries than what was first proposed as an amendment to S. 2222. It carefully sets standards by which the President may declare an Immigration emergency. It rightfully requires prompt and reasonable notice to the Congress once such an emergency is declared. It mandates a timely sunset of the declaration. It gives a flexibility in those Federal facilities and agencies to be used as need be for unforseeable circumstances. It cuts through the usual redtape and across the territories of bureaucracies. It acknowledges due process rights and minimizes as much as possible the devestating effects that governmental interference can have on innocent people going about their everyday business.

The proposal seems to clarify existing authority and to bring into sharper focus just what we the Congress, who constitutionally wield the power to regulate immigration, wish to delegate to the executive branch in addition to the inherent powers the executive already holds in that area. Generally speaking, and based upon a brief study of the draft, I think the new proposal will complement and supplement that which we have now; however, I would like to point to some possible problems in some sections of the draft.

I worry not so much with what the draft has in it, but what has been left out. I am concerned basically with provisions for financial assistance to impacted communities, a burden we are still carrying in Florida. It should be clearly stated that such places deserve, at least, disaster area type funding. Never again should a State or city budget have to endure 2 years of shouldering a Federal burden without Federal help.

As I understand it, the bill allows the President to renew certain powers which are triggered by his declaration that an immigration emergency exists without any sort of notice to the Congress. This blanket extension of the broad authorities for what could be an indefinite period of time, without any sort of review by the Congress, could present problems. For instance, the draft bill allows for all environmental and historical preservation laws to be waived during a declared immigration crisis. This is consistent with the need to make sure that emergency efforts during a crisis are not delayed. However, we need to make it clear that such waivers would be related to the need to respond to the special conditions created by the crisis. Notice to Congress is required by the bill each time the President extends a declaration of emergency. So too should notice be required when the President extends exemptions to environmental protection laws. Such notice will guard against abuse by allowing timely inquiries and intervention by Congress.

As I said earlier, these are my preliminary reactions to this proposal. I plan to look further into the different provisions in the proposal, and would hope to be able to share some of my reactions with you in the future. I also hope that we can get the views of our State and local government officials on this proposal.

Cooperation among Federal, State, and local governments will be essential in any immigration emergency, and consultation at this early stage will help promote cooperation during a time of crisis.

By these few concerns of mine, I do not want to leave the impression that the proposal does not have my support. It does. All who have worked on the bill should be very proud of it. I heartily support it and applaud the administration's dedication to resolving the complex problems presented by mass migrations.

Mr. Chairman, it is interesting to note that 100 years and 1 month ago, Congress passed the first general immigration act. Senators sat as you and I do today discussing the weighty problems that this issue presents. It is hard to close the doors of the American dream on those who wish to embrace it. But it was their duty, as it is our duty today, to weigh the welfare of the Nation against that of the prospective immigrant. The courts upheld the power to regulate immigration several times after that first bill passed and our Supreme Court has declared:

> It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.

International agreements which we have entered into—such as the Convention on the Territorial Sea and Contiguous Zone—confirm that 90-year-old Supreme Court declaration. In fact, one article of that agreement specifically allows or justifies interference with foreign vessels within the 12-mile belt of high seas next to territorial seas to:

(a) Prevent infringement of its customs, fiscal, immigration or sanitary regulations within its territory or territorial sea; and

(b) Punish infringement of the above regulations committed within its territory or territorial sea.

I am pleased that the administration has developed a contingency plan under existing law as well as draw the draft which is before us today. It is important that we move promptly and in concert on this important legislation. The quick response that you, Mr. Chairman, and the subcommittee have shown in setting these hearings assures me of your commitment to this goal. I pledge my help in anyway possible to strengthen our resolve and our existing authority to protect our shores from future wars—like the one Castro waged against us during Mariel. We must assure the people of Florida that they will not be made to suffer such an invasion again. We must assure our country that we have a plan, that we are again in control of our borders, and that we are ready no matter what the crisis. Above all, we must let the rest of the world know that we will never sanction a loss of control of our sovereignty.

Thomas Enders, our Assistant Secretary of State, underscored the importance of the notion of deterrence when he testified earlier to the Judiciary Committee in support of a contingency plan. He said, and I quote:

> Castro, and the Cuban people, must be in no doubt or uncertainty about the nature of our response to a new Mariel. If they believe we are unprepared to handle an illegal immigration emergency; if they believe we will waiver between attempting to stop the migration and welcoming it; if they believe we will in the end welcome the arrivals and resettle them in American communities, then the temptation to deal us another blow will be very great.

Mr. Chairman, I agree with Secretary Enders that it is absolutely essential that the U.S. Government make it clear that we have both the determination and the tools to prevent another Mariel from occurring in the future.

Thank you.

Senator SIMPSON. I thank you very much.

Paula, do you have anything you wish to say?

STATEMENT OF HON. PAULA HAWKINS, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator HAWKINS. Mr. Chairman, thank you for this opportunity to testify on the immigration problems that have confronted my State and to discuss means of dealing with immigration problems that might develop in the future. I have already proposed to this committee one way that we can deal with problems posed by a

sudden influx of aliens, encouraged to immigrate by Government in outright violation of our immigration laws. My proposal was an amendment that would have required the Federal Government bear 100 percent of the cost of any future Mariel boatlifts. I hope that the committee will give this suggestion continued and full consideration, but we are here today to discuss another means of protection—immigration emergency powers.

I would like to make it clear at the start that my support for immigration emergency powers legislation does not mean that I oppose our national policy of accepting persecuted people. On the contrary, I fully believe that the United States should continue as a beacon of hope to those who live in fear of death or imprisonment for their political or religious views. As you all know, Florida has been a haven, a retreat, for Cubans and other Latin Americans who have fled tyranny and persecution, and I am proud of that. Florida has given solace and refuge to these brave refugees, and they in turn have made significant contributions to the prosperity and culture of the State. I do believe in effective enforcement of our immigration laws, but I welcome those who are eligible to enter our country as political asylees.

I want to emphasize the distinction between the case of a small group fleeing persecution and a massive influx of undocumented aliens. This difference in magnitude is significant because it affects the accepting community. For instance, there is a tremendous difference between receiving a large number of Indochinese refugees over a number of years and accepting the Cuban entrants who arrived from Cuba over a number of months from Mariel. Most important, the Indochinese refugees were interviewed before they were allowed in the country, and their legitimacy as refugees was established. Also, Americans had enough time to prepare the refugees for adjustment to American society—and to prepare themselves. The alien who hops in a boat and heads for our shores is not so lucky. We may have no clear idea whether he is here legitimately or not, and—even more important—we have no time to prepare for his arrival. And when you are dealing with numbers like 120,000 Cuban entrants over a span of 6 short months, tremendous problems are unavoidable.

Most of you probably remember the segments from the evening news during the Mariel boatlift. Scores of small pleasure craft bring in hundreds of Cubans. Tent cities are constructed hastily under the shadow of the highway overpass. Thousands of Cubans are screened in an effort to distinguish legitimate refugees from the criminals, the mentally ill, and other outcasts that Castro tried to dump on the United States.

The arrival of the Cubans 2 years ago has had an impact on south Florida that we have yet to recover from. As you know, in most cases crime increases along with increases in the population. The increases in the Dade County crime rate, however, has far outgrown the population increase. In the year following the boatlift, Dade County's population increased by roughly 10 percent but the increase in serious crimes rose by over double that: 23 percent. Prior to the boatlift, the crime rate in Dade County actually decreased. I believe that this underscored the real purpose and need for emergency powers. It is to provide protection for our communi-

ties from the type of disaster that befell Florida in 1980. It is to protect people and the quality of their lives from the impact of a sudden and massive influx of undocumented aliens.

There are also financial considerations at work here. Conservative estimates place the cost of the Mariel boatlift at $1 billion. One billion dollars that could have been spent on veterans' programs, aid to the handicapped, education assistance, health programs, a job-training program—all designed to help Americans with legitimate needs. These are the alternatives that we could have spent money on. But we spent it on a surprise influx of aliens. Clearly, we have a need for immigration emergency legislation.

Unfortunately, a recurrence of the Mariel experience is entirely possible. Mariel was a contrived scenario. Manipulating the discontent seething below the surface of the Cuban population, Castro orchestrated an exodus to have the maximum detrimental affect of the United States. The State Department has estimated conservatively that one-tenth of the Cuban population, 1 million people have expressed an interest in leaving Cuba for the United States. This latent discontent plus a depressed economy are perfect conditions for a repeat of the Cuban boatlift—should Castro so desire. It would be unconscionable for the United States to be caught unprepared again.

At the very least, there must be a public contingency plan. I know that the administration has drawn up a plan—good. The administration's contingency plan is classified, however. That is counterproductive. One of the main reasons to have a contingency plan at all is to assure the people of Florida that effective measures are available to them—also, to show the Cuban Government that the United States is determined to resist violations of their immigration laws.

The administration has made public a list of sections in the law to back up their contingency plan. This list is helpful, but unfortunately it only emphasizes the need for more extensive legislation. The legislative authority applies mainly to certain situations: punishing people who bring undocumented aliens into the country illegally, detaining aliens, and making certain classes of aliens illegal. There must be broader authority. The boatlift would not have been possible had not hundreds of Americans sailed to Mariel Harbor in hope of finding their relatives. The hope of these Americans is perfectly understandable; however, the result of their actions was a disaster. Fines or the forfeiture of vessels is not sufficient to deter their actions. There were fines in place in 1980, and vessels used in the illegal transport of aliens were subject to forfeiture. And yet people took the risk and sailed to Mariel Harbor. Clearly, more extensive authority is required.

I support the legitimate need for full immigration privileges from Cuba to the United States—legal immigration to the United States. I support efforts to reinstate preference visas for Cuba—since there are none being granted now. If there are Cubans desiring to come to the United States, as I know there are, then legal immigration is the proper route, but orchestrated by us, not by Fidel Castro.

Immigration emergencies are a new experience for the United States, and we are trying to address them with a comprehensive approach to the problem. I encourage you to move forward now

and in the next Congress with legislation designed to protect our communities from the sudden and devastating impact of an immigration emergency.

Senator SIMPSON. Thank you very much to both of you.

Now, we will proceed with the final panel of the afternoon.

That consists of the Most Reverend Edward A. McCarthy, Archbishop of Miami; Arthur C. Helton, director, political asylum project, Lawyers Committee for International Human Rights; the Reverend Walter F. Horlander, executive director, Florida Council of Churches; Michael S. Hooper, executive director, National Emergency Coalition for Haitian Refugees; Robert Canino, Miami district director, League of United Latin-American Citizens; and Father Gerard Jean-Juste, executive director, Haitian Refugee Center, Inc.

Thank you so much for your patience.

Even though you will notice very clearly I did not use this device on my colleagues in any way it would be observable, because some day I may be pleading with them, I must return to this device. I regret that, but I must be on my way soon after 4:30.

We have to have time to develop and get through questions and so on. It is necessary to do this.

It is a pleasure and honor to have before us the Most Reverend Edward A. McCarthy.

STATEMENT OF MOST REV. EDWARD A. McCARTHY, ARCHBISHOP OF MIAMI; ARTHUR C. HELTON, DIRECTOR, POLITICAL ASYLUM PROJECT, LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS; REV. WALTER F. HORLANDER, EXECUTIVE DIRECTOR, FLORIDA COUNCIL OF CHURCHES; MICHAEL S. HOOPER, EXECUTIVE DIRECTOR, NATIONAL EMERGENCY COALITION FOR HAITIAN REFUGEES; ROBERT O. CANINO, MIAMI DISTRICT DIRECTOR, LEAGUE OF UNITED LATIN-AMERICAN CITIZENS; AND FATHER GERARD JEAN-JUSTE, EXECUTIVE DIRECTOR, HAITIAN REFUGEE CENTER, INC.

Archbishop MCCARTHY. My name is Edward A. McCarthy, and I am the Roman Catholic Archbishop of Miami. I am accompanied today by Msgr. Bryan O. Walsh, executive director of Catholic Community Services. CCS is the social welfare arm of the archdiocese. Monsignor Walsh and the agency he administers have been involved in the reception and resettlement of refugees in south Florida since 1957, when some of the Hungarian Freedom Fighters were sent here.

Twenty-five years ago, a few months after the establishment of the diocese, my predecessor in office, Archbishop Coleman F. Carroll, estalished the first social services agency in the Southeast to serve Spanish-speaking immigrants.

During the summer of 1960, the Centro Hispano Catolico was overwhelmed by the number of Cuban refugees seeking help. When it was brought to the attention of Archbishop Carroll, he convened several meetings of political, civic, and business leaders and alerted them to the crisis. It was clear that the influx of Cuban refugees was also taxing the resources of this community which was in the midst of a severe recession, and an appeal was made to the Gover-

nor, then Hon. Leroy Collins, who in turn appealed to the White House, since immigration and the care of refugees from abroad was clearly the responsibility of the Federal Government and beyond the competence of the State or local communities.

Today, a quarter of a century and nearly 1 million refugees later, the issue remains the same, and I commend Senators Chiles and Hawkins for recognizing this and at long last, through the introduction of their bills, placed it on the agenda of the U.S. Congress.

In my opinion, the biggest single contributing factor in the crisis posed by the Mariel boatlift, other than the boatlift itself, was the refusal of the Federal Government to accept responsibility for dealing with the crisis.

Immigration and refugee policy is the reserve of the Federal Government. This does not mean that the local community has no responsibility or that its interest can be ignored. You are to be commended for recognizing the vital interest of this community in whatever contingency plans the Government may have or may develop. We have to live with the results of such planning or lack of planning and for almost a quarter of a century we often have suffered from the indifference and neglect of the Federal authorities.

During this period when almost 1 million refugees have entered the United States through south Florida, and more than two-thirds of them have remained here, we have not received one extra unit of Federal housing of any kind; not one job has been created here as the result of Federal initiative, and as our Florida Senators well know, welfare, medical care, and public education have received relatively meager reimbursement.

We, as a community, have reason to be outraged at the treatment meted out to us by the Federal Government. The refugees are in our midst and on our streets as a result of Federal policy or its absence.

One of the principal marks of a sovereign nation state is its ability to control its boundaries. While we affirm that the Earth is the patrimony of all mankind and reject the notion that the sovereign nation state is absolute, even when it comes to its boundaries, we want to make it clear that in no way do we support the idea that any nation can allow open, unrestricted, unregulated migration across its boundaries.

The 1980 Mariel boatlift which began in a wave of enthusiasm and admiration for young people willing to risk their lives to defy a Communist dictatorship quickly turned sour. It provided a sad case history of what happens to a community's moral fiber, a community's commitment to the values it cherishes when it feels itself under threat, and that is exactly what happened when cubans in Miami got tired of waiting and, on April 20, 1980, the first two boats went down to Mariel.

It took over a week for the Federal Government to respond to the flood, and even then, the Federal Emergency Management Agency came only to help, not to take over as was its responsibility. When the community realized it could not count on the Federal Government for help, it underwent a traumatic reaction and turned against the very same refugees it had welcomed a few days earlier.

This turnabout was all the more dramatic because people of every ethnic group admired those 12,000 young people in the grounds of the Peruvian Embassy. In fact, in those first few days we were rather amazed at the outpouring of love and care at the Tamiami Reception Center set up by our local—not Federal—government.

This had not been our experience in 1960 and in 1965 when earlier waves of refugees had brought hundreds of thousands into a much smaller community. In 1960 and 1965, the Cubans had few defenders in this country. With this testimony I am submitting, for the record, a paper prepared by Monsignor Walsh for the 1982 American Orthopsychiatric Conference which will give you a deeper insight into the ethical questions involved.

Let me just summarize very briefly his conclusions:

> What can we conclude from these reflections? Nothing perhaps very new, but they at least remind us that our society is still vulnerable. When faced with what is perceived as a threat or a crisis, there is a temptation to abandon some of our most cherished values such as freedom, equality, respect for persons. It happened in 1942 with the Japanese-Americans. It happened in Miami in 1980.

Monsignor Walsh concludes with a quotation of mine to a reporter after celebrating mass on Christmas Eve of 1981 at Krome Avenue for Haitian refugees: "These days I have a hard time looking the Statue of Liberty in the eye."

The purpose of the bills introduced by our Senators is to grant the President emergency powers for dealing with such a crisis in the future. Before commenting in detail on the bills, I would like to place before you some considerations for preventing such an eventuality; and at the same time call your attention to an injustice that calls to Heaven for relief. A very wise philosopher once wrote that "those who neglect the lessons of history are doomed to repeat its mistakes."

Twice before this community closed its doors to direct migration from Cuba. From October 22, 1962, until September 1965, the door was closed and separated families could only be reunited by long and expensive trips and sojourns to third countries, such as Mexico and Spain.

Few could afford this, and the pressure built up and desperate men began to make clandestine trips to Cuba in small boats under the cover of darkness. They gave the Cuban Government the opportunity to play the role of humanitarian, and it opened the Port of Camarioca to anyone who wished to come down to pick up his or her family. The result was chaos, and it was only due to the heroic efforts of the U.S. Coast Guard that thousands were not lost in the treacherous waters of the Straits of Florida.

The administration of the day sat down and negotiated with the Cuban Government a memorandum of agreement which in an orderly and controlled fashion reunited nearly half a million people, with no disruption of our community.

The freedom flights ceased in 1973, and we have a new period in which it becomes extremely difficult to reunite families. This situation continued until the Mariel boatlift began in April 20, 1980.

Once again the Cuban Government was able to don the robe of the humanitarian and invited those who wished to reclaim their families to come to Mariel and do so.

Once again, the Cuban Government was able to manipulate the situation to its own advantage. To those of us who were close to the scene and who followed the activities of the so-called dialog, Mariel came as no surprise. I myself had met with the Secretary of State, Mr. Cyrus Vance, in Washington in December 1978 to plead the cause of the political prisoners whom the Cuban Government was willing to release if the U.S. Government would accept them.

The slow response and indeed the ultimate failure of our Government to accept many of these men and women who to this day are waiting in Havana for promised visas, shocked me as an American citizen.

Today, in 1983, we find ourselves once again in the same situation. The door to the United States for Cubans is shut tighter than ever, and I believe that history will repeat itself. The pressure is building up. We have far too many separated families in our community—families with a father, a mother, a son or a daughter, a husband or a wife still in Cuba.

Many are desperate, desperate enough to try the lunacy of highjacking airliners. Some of these families were separated at the time of Mariel. However, many are long-time residents, yes, U.S. citizens who are being denied, by the present policy, the privilege given to them in law of claiming their loved ones under the second and fifth preferences of our immigration laws. This is indefensible.

Among them are those who trusted the U.S. Government in 1980. They did not go to Mariel because they had a legal, albeit slow way of reuniting their family.

My question to you is: Will these people be willing to listen the next time the Cuban Government opens a port? I suggest and indeed urge that the first priority on your agenda should be to arrange, one way or another, for the resumption of an orderly, planned migration, and that top priority be given to the reunion of families.

This would be in accord with our highest traditions and at the same time would be the best way of preventing another Camarioca or Mariel. Let us not repeat the mistakes of history.

As long as people have hope, they can be very patient and they will wait. It is when all hope is lost and people are desperate that they attempt such dramatic and futile measures as highjacking and small boat trips.

I suggest that if our Government had been more open to this concern, a concern that we constantly reminded them of, both Camarioca and Mariel would never have occurred, and there is no reason why it should happen a third time.

The point I wish to make is that the Mariel episode was clearly foreseeable and almost inevitable, given the policies of omission and commission of the Federal Government and this community has paid and is paying a high price.

It did not occur in a vacuum, and if we want to prevent a reoccurrence, then we must look at its root cause. To talk of granting emergency powers to the President without dealing with these issues, is to beg the question.

I would like now to comment on some specific provisions of Senate bill 592, Senator Chiles, and Senate bill 1725, Senator Hawkins.

My first comment concerns the question of judicial review. I urge the committee to delete those sections which deny judicial review. I find the very concept of denying access to the courts objectionable and, in my opinion, contrary to one of the most cherished values of our Nation. In other words, I find it completely un-American.

I can assure you that it has only been through access to the courts that Haitian refugees have received even a hearing on their asylum cases. Is it the fact that the courts have repeatedly ruled against successive administrations that judicial review is objected to? If so, then we are in sad shape.

It will be a sad day for American democracy when a person—notice I do not say citizen—is denied access to the courts. The credibility of the United States is at stake, and I urge you to strike this provision.

Read the story of the Cuban youth Rodriguez, who was returned to Cuba last year in the sort of action envisioned by section 4 of S. 595—page 19, lines 9 to 17. This same section clearly leaves the complete decisionmaking with regard to asylum cases to the inspectionary immigration officer's discretion. This is too much discretion for any one man or woman.

By the very nature of their condition, persons seeking asylum on the shores of a country of first asylum are not going to have documentation. The provisions of section 4 seem to me to apply even without declaration of an immigration emergency. This seems to me to be an attempt to get around all the findings to date of the U.S. district and appeals court with regard to the Haitians.

My second comment regarding this proposed legislation has to do with its failure to establish clearly the responsibility of the Federal Government for the care and sheltering of refugees in such an emergency. This should not be the burden of the community which happens to be the port of entry. The Federal Government must accept responsibility for all refugees who are admitted or whom the Government fails to deport. This is not a local responsibility. Likewise, the provision should be made to relieve the impact in places of ultimate resettlement.

I know that it is the fervent prayer of everyone in this community that we will not have to endure another Mariel. I do know that if the need arises, many of our people will make heroic sacrifices as they did in April and May 1980. I believe that if our Government, conscious of the humanitarian tradition of this Nation, allows an orderly, controlled migration for the purposes of reuniting families, the chances of another Mariel would be greatly reduced.

If this is not done, and such a day comes when this country by the use of force attempts to turn back people such as came on the Mariel boatlift, we will never be able to look at the Statue of Liberty in the eye again.

Senator SIMPSON. Thank you so much, Archbishop.

Mr. Helton.

STATEMENT OF ARTHUR C. HELTON

Mr. HELTON. Thank you, Chairman Simpson, for inviting our views at today's hearing. My name is Arthur Helton. I am the di-

rector of the political asylum project of the New York-based Lawyers Committee for International Human Rights.

Since 1978, the lawyers committee has been a public interest law center working in the areas of international human rights, refugee and asylum law. The political asylum project of the committee was created in late 1980 to provide representation to individual asylum applicants in the United States. The project utilizes volunteer lawyers whom it trains and supervises. Through the asylum project, the lawyers committee has provided legal representation for numerous political asylum applicants from countries all over the world. Based on its experience, the committee has testified on several occasions in Congress and prepared many papers on various asylum and refugee policy matters. In sum, the lawyers committee is dedicated to ensuring that refugees and asylum seekers receive just and equitable consideration under domestic and international law.

Our testimony today examines two proposals for immigration emergency legislation—S. 592 and S. 1725. The legislative proposals raise several questions as to whether the emergency powers sought by the executive branch will, if exercised, deprive aliens of rights under the Constitution, statutes, and treaties of the United States. Our examination in this respect is limited to the likely impact upon asylum seekers of the broad new powers conferred by the act to interdict—intercept and return—or to detain arriving aliens. In our view, these powers run afoul of the entitlements of asylum seekers in the United States under domestic and international law.

Sections 240A and B of both bills provide that the executive can utilize various powers, including the power to interdict or to detain arriving aliens, upon a determination by the President that there is an "immigration emergency"—an immigrant mass influx of undocumented aliens. The emergency declaration extends automatically for a period of 120 days, and is extendable for consecutive periods of like duration.

During the declaration, the President may order that the arrival of aliens be prevented, inter alia, by intercepting them on the high seas and returning them to the country from whence they came without the need for a hearing before an immigration judge—special inquiry officer. S. 592 specifically authorizes separate asylum procedures for aliens subject to such a declaration and restricts the Federal courts from reviewing such determinations.[1]

Both bills provide for the imprisonment of arriving aliens subject to an emergency declaration and the transfer of such aliens to any other place of detention. Judicial review is limited to the question of whether the person in question falls within the category of aliens subject to detention

If enacted, interdiction and detention powers in the bills will conflict with the entitlements of asylum applicants under domestic and international law.

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[1] S. 1725 qualifies the interdiction power to the extent that "appropriate measures" must be taken "to ensure the international legal obligations of the United States concerning refugees are observed." Section 240B(a)(3)(B).

ALIENS DETENTION: A DEPARTURE FROM PRIOR PRACTICE

Initially, it should be noted that an alien detention program would be a departure from modern humane practice. Traditional administrative practice with regard to the detention of aliens seeking admission to the United States, at least since the 1950's, has been to release them absent a demonstrable security risk or likelihood of absconding. This has included aliens with or without a passport or visa, as well as applicants for political asylum in the United States. The traditional release policy was recognized by the Supreme Court in 1950 when it explained that the policy was designed to avoid needless confinement and that it reflects the human qualities of an enlightened civilization. *Leng May Ma* v. *Barber*, 357 U.S. 185, 190 (1958). This liberal release rule obtained in the United States until 1981, when our Government began to detain arriving Haitian boat people.

International experience has demonstrated that asylum seekers frequently flee persecution in their home countries without valid travel documentation—passport or visa. The Handbook on Procedures and "Criteria for Determining Refugee Status" prepared by the United Nations High Commissioner for Refugees, which is used by the United States in the analysis of asylum claims,[2] explains that:

> [A]n applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents (Paragraph 196).

A detention program would impact heavily upon such persons, raising a number of legal questions.

DETENTION IS INCONSISTENT WITH DOMESTIC AND INTERNATIONAL LAW

Under a detention program, many arriving asylum seekers will be imprisoned pending the adjudication of their claims. Aliens are entitled, however, to apply for political asylum in the United States irrespective of their immigration status, that is, whether or not they have travel documents—8 U.S.C. § 1158a(a). Also, article 31 of the Protocol Relating to the Status of Refugees, to which the United States became a party in 1968,[3] prohibits the imposition of penalties, on account of their illegal entry or presence, as well as unnecessary restrictions on their movement. A detention measure which burdens some asylum seekers with imprisonment and which penalizes them for petitioning for asylum, would violate the right to pursue asylum under the Refugee Act of 1980 and the Constitution.[4] Such detention, furthermore, would constitute a penalty and unnecessary restriction under the protocol.

Additionally, the detention power could be used against selected nationalities. Such express discrimination is constitutionally imper-

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[2] *See Stevic* v. *Sava*, 678 F.2d 401 (2d Cir. 1982), cert. granted, No. 82-973 (Feb. 28, 1983); *In re Frentescu*, Int. Dec. No. 2906 at 4 (BIA June 23, 1982); *In re Rodriguez-Palma*, 17 I&N Dec. 465 (BIA 1980).

[3] 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267.

[4] *See Chun* v. *Sava*, 708 F.2d 869 (2d Cir. 1983); *Haitian Refugee Center* v. *Smith*, 676 F.2d 1023; *Orantes-Hernandez* v. *Smith*, 541 F. Supp. 351 (C.D. Cal. 1982); *Nunez* v. *Boldin*, 537 F. Supp. 578 (S.D. Tex. 1982).

missible. Cf. *Louis* v. *Nelson*, 544 F. Supp. 973 (S.D. Fla. 1982), aff'd in part, rev'd in part, sub nom. *Jean* v. *Nelson*, docket No. 82-5772 (11th Cir. April 12, 1983).[5]

A detention program would herald the prospect of prolonged imprisonment for many arriving asylum applicants. While indefinite imprisonment of aliens by itself may be legally infirm,[6] it has particularly adverse consequences for asylum seekers. Imprisonment during the asylum adjudication process makes representation by counsel difficult, and prolonged imprisonment may coerce bona fide refugees into returning to countries where they will be persecuted.

Such was the experience of detained Haitians who have chosen to return to Haiti. After being imprisoned under onerous conditions, frequently in facilities designed but for short-term detention, some Haitians gave up their right to apply for political asylum. One Haitian who returned voluntarily in June 1982 told a Federal judge:

> After 11 months in detention in the United States, I wish to return to Haiti. My decision is based on the fact that, over the past month, I have become very depressed and ill and have not been able to receive medical treatment.
>
> I wish to state that this decision to leave in no way indicates a change from my previous position of fearing political persecution upon return. I fully expect that I may be mistreated or even killed upon my return to Haiti. However, I would rather die in my own country than remain in prison in the United States without any indication that I will ever be released. (Affidavit of Haitian who "voluntarily" departed.)

Nor has the impact been felt only by Haitians. Recently, several detained Afghan refugees have given up their right to pursue asylum in return for earlier consideration for release from detention in New York. They thus are placed in a very tenuous parole status, in which they can not become permanent residents or citizens, bring close family members to join them in the United States, or travel abroad without jeopardizing their status.

A detention program that deters persons from exercising their right to apply for asylum would be inconsistent with domestic and international legal obligations not to return persons to territories where they would likely suffer persecution as refugees. See 8 U.S.C. 1253(h); article 33 of the protocol relating to the status of refugees.

The unfettered power to transfer detained aliens also introduces complications. First, it ignores an alien's entitlement to access to family and friends while in proceedings. See 8 U.S.C. 1226(a). It

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[5] While the district court declined to find discrimination, it determined that the detention policy had been implemented in a procedurally improper manner without interested parties having been given notice and an opportunity to comment in violation of the rulemaking requirements of the Administrative Procedure Act (APA). On appeal, a panel of the Eleventh Circuit Court of reversing the finding that there had been no discrimination. Rather, the panel found that the Haitian detention program was intentionally discriminatory, and violated the constitutional guarantee of equal protection. On August 16, 1983, at the government's request, the Eleventh Circuit granted rehearing en banc. The case was orally argued before the full Circuit on September 14, 1983, and a decision is awaited.

[6] *See Fernandez* v. *Wilkinson*, 505 F. Supp. 787 (D. Kan. 1980), affd., 654 F.2d 1382 (10th Cir. 1981); *Soroa-Gonzales* v. *Civiletti*, 515 F. Supp. 1049 (N.D. Ga. 1981).

also frustrates the preparation of claims for political asylum in the United States. Local legal services are often unavailable in remote areas, particularly counsel with a background in immigration law. It would be virtually impossible to find any lawyers to travel with interpreters to these facilities. As a result, asylum seekers could remain for months or years without ever speaking with a lawyer.

The 1,000 bed long-term alien detention facility now being constructed at Oakdale, LA, illustrates the problem. For the reasons indicated previously, many of the aliens detained at Oakdale will be asylum seekers. Oakdale is located in rural southwest Louisiana, and interpreters and lawyers in this relatively remote area will be scarce. Unrepresented asylum seekers will simply languish in detention.

Finally, the proposed restriction on Federal court review of the legality of detention would raise serious constitutional issues, including whether any such restriction constitutes an unconstitutional suspension of the writ of habeas corpus. U.S. Constitution article I, section 9, clause 2; Hart, "the Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic," 66 Harv. L. Rev. 1362 (1953).

LIKELY IMPACT OF INVOCATION OF INTERDICTION POWER

Interdiction, the apprehension of aliens in vessels coming to the United States, is a radical departure from current inspection and inquiry procedures which afford an alien the opportunity to present his or her case, through counsel, to an immigration judge.[7]

As to refugees, an interdiction procedure would run afoul of the obligations under 8 U.S.C. 1253(h) and its international law correlative—article 33 of the protocol relating to the status of refugees—to refrain from refoulement. This is the duty to not expel or to return a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, or membership in a particular social group or political opinion. A refugee who would experience persecution might be returned upon interdiction without any recourse simply because of an inability to articulate the reasons that persecution is feared, or to persuade an on-ship inspector that the fear is well-founded, or simply because he or she is afraid to speak to authorities. This is particularly so as there would be no access to counsel under these circumstances.

A refugee fleeing persecution after a stressful and surreptitious journey often lacks the documentary resources, the psychological reserve, and even perhaps the willingness to persuade someone of the legitimacy of his or her asylum claim. Indeed, the handbook emphasizes the difficulties experienced by aliens in pursuing asylum at a national border:

> It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs (Paragraph 190).

[7] See 8 U.S.C. §§ 1226, 1227, 1362.

A person, who because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case (Paragraph 198).

The vague proviso in S. 1725 about taking measures to protect the rights of refugees simply fails to address these concerns.

Additionally, the creation of a separate procedure for asylum seekers subject to an emergency declaration would be inconsistent with the mandate of the Refugee Act of 1980 to establish a uniform procedure based on neutral criteria. *See Chun* v. *Sava*, 708 F.2d 869 (2d Cir. 1983).

The preclusion of Federal court review in this context again would raise serious constitutional questions.

The only experience to date with an interdiction program, the Government's Haitian program, indicates that the concerns discussed above cannot be adequately met in an interdiction procedure, particularly in view of the lack of access to counsel, the use of personnel not trained in refugee recognition, the presence of onboard representatives of the Government of claimed persecution, and the effectively nonreviewable character of the process. Over 500 Haitians have been intercepted on the high seas. Not one, however, has been found to have a colorable asylum claim, and all have been returned to Haiti. If it is deemed necessary to control an influx of a large number of aliens, it must be done in a way that does not deny the rights of those entitled to refugee status, and that permits them a fair opportunity to have their claims determined.

A SUGGESTION: THE PAROLE POWER

Rather than to focus so emphatically upon deterence, one possible approach to the problem of mass alien influxes could involve a more generous use of the parole power to respond temporarily to the influxes, coupled with international arrangements to ensure that an undue burden does not fall upon any particular country.

The parole power, under section 212(d)(5) of the Immigration and Nationality Act, as enacted in 1956, has traditionally been used to bring groups of refugees into the United States. That provision was utilized in 1956 to bring to the United States over 30,000 Hungarian refugees who had fled to Austria after the unsuccessful revolution in Hungary in October 1956. H.R. Rep. No. 96-608, 96th Cong., 1st sess. 3 (1979); Library of Congress, "U.S. Immigration Law and Policy 1952-1979," 18 (1979). Subsequently, large numbers of Cuban refugees were parolled into the United States by the Attorney General after the fall of the Batista government in late 1959. H.R. Rep. No. 96-608, supra, at 4; Library of Congress, "U.S. Immigration Law and Policy 1952-1979," supra, at 23, 24, 46.

Parole was needed in the 1960's and early 1970's to bring in additional refugees—Chinese from Hong Kong and Macao; Czechs; Jews from the Soviet Union; and Ugandans. More recently, parole was used for Chilean refugees, Cuban prisoners, Latin American refugees and detainees, and over 250,000 Indochinese refugees, particularly after the fall of Vietnam and Cambodia in 1975. H.R. Rep. No. 96-608, supra, at 5; Library of Congress, "U.S. Immigration Law and Policy 1952-1979," supra, at 77. The parole power contin-

ues to be available and is, in fact, the legal basis for the current Cuban-Haitian entrant program that was established in 1980.[8]

The parole power could be utilized, as it has been in the past, to stabilize temporarily mass alien influxes on an emergency basis, coupled with international arrangements so that an undue burden would not fall upon any particular country. Such a procedure might be responsive to the problem without diminishing the rights of refugees.

The emergency powers sought with respect to interdicting and detaining arriving aliens would violate the entitlements of asylum applicants under domestic and international law. The powers are a radical divergence from traditional policy and practice. A solution must be devised to the problem of mass alien influxes that recognizes the rights of asylum seekers.

[Material submitted for the record follows:]

[8] The Refugee Act of 1980 provides that the parole power cannot be utilized to bring a refugee into the United States unless "the Attorney General determines that compelling reasons in the public interest" with respect to a particular alien requires parole in lieu of admission as a refugee. 8 U.S.C. § 1182(b)(5)(B). The restriction, however, applies only to those persons who have been determined to be refugees under 8 U.S.C. 1157.

THE LAWYERS COMMITTEE
FOR INTERNATIONAL
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Michael H. Posner
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POLITICAL ASYLUM PROJECT

November 15, 1983

Richard W. Day
Chief Counsel and Staff Director
Subcommittee on Immigration
and Refugee Policy
United States Senate
Committee on the Judiciary
Washington, D.C. 20510

Dear Mr. Day:

I am writing in connection with the hearing on October 28, 1983, in Miami before the Subcommittee on proposed immigration emergency legislation. In particular, it occurs to me that the provisions in S.592 regarding the summary exclusion of arriving aliens as well as the elimination of judicial review for certain asylum claims are subject to the same analyses that we made in connection with similar provisions in the Simpson-Mazzoli bills. Accordingly, enclosed is a copy of the report that we issued in May of 1982, which treats the risks of summary exclusion as well as the need to preserve full administrative and judicial review in the asylum context.

Also enclosed is a copy of a letter that I have sent to Alan C. Nelson in connection with his written statement presented at the hearing regarding the volunteer lawyer effort to represent Haitian asylum seekers in the United States.

I ask you to make this letter and its enclosures part of the record of these proceedings.

Sincerely,

Arthur C. Helton

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enclosures

AN ANALYSIS OF THE ASYLUM AND REFUGEE PROVISIONS OF THE PROPOSED IMMIGRATION REFORM AND CONTROL ACT OF 1982

BY

ARTHUR C. HELTON
MICHAEL H. POSNER

THE LAWYERS COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS

I. INTRODUCTION

The following comments and recommendations have been prepared by the Lawyers Committee for International Human Rights.*/ They address the asylum and refugee provisions in the proposed Immigration Reform and Control Act of 1982 which was introduced in Congress by Senator Alan K. Simpson and Representative Romano L. Mazzoli on March 17, 1982.

Since 1978 the Lawyers Committee has devoted extensive efforts to refugee and asylum issues, and it has represented or obtained representation for more than 250 asylum applicants from 33 countries. Based on this experience, the Committee has commented on various legislative and administrative proposals pertaining to refugees and asylum.

Generally, while the Lawyers Committee is concerned about several aspects of the Simpson-Mazzoli bill, such as the possible discriminatory impact of employer sanctions and the diminition of the principle of family reunification, it supports

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*/ The preparation of this report was assisted by Ms. Sabrina McCarthy and Mr. Steve Toben of the Yale Law School.

many of the changes proposed in the Simpson-Mazzoli bill. For example, the Committee agrees that the procedural law of asylum should be codified, rather than being governed by regulation. A statutory basis for asylum adjudication procedures helps to assure proper congressional attention to the asylum process. In the past, we have expressed our concern about a decision-making process which has impeded an independent examination in a number of individual cases. As Congress considers various proposals for reform, it is important that it does not permit legitimate concerns for efficiency and control to frustrate the equally important national interest in protecting genuine refugees from persecution.

In this regard, procedures should be established that clearly delineate the proper roles for the Justice Department, INS, State Department, UNHCR and others in the adjudication process. Consideration must also be given as to how a new cadre of "independent" administrative law judges will be recruited, trained and supervised. It is equally important to determine how they will be kept apprised of current conditions in countries from which asylum applicants will come. Finally, Congress must consider what legislative safeguards can be applied to insure the independence of the judges from the various political pressures of the day.

While the Lawyers Committee supports the efforts to create a new asylum adjudication system, we have a number of serious concerns about the procedures proposed in the Simpson-Mazzoli bill. The following comments and recommendations address our primary concerns.

II. THE RISKS OF SUMMARY EXCLUSION AND THE NEED FOR NOTICE OF THE RIGHT TO PURSUE POLITICAL ASYLUM AND THE RIGHT TO COUNSEL

The Simpson-Mazzoli bill would introduce a new procedure for screening aliens seeking to cross the border. In particular, any alien who appears to lack entry documents

or a basis for entry, or who has not "applied for asylum,"*/ could be "barred" from entry into the United States. A determination of the alien's inadmissibility at this juncture would be subject neither to administrative nor to judicial review. Under this procedure, a refugee would be required to make an immediate application for asylum at the border in order to avoid summary exclusion.

Initially, it should be noted that the summary exclusion procedure is a radical departure from current inspection and inquiry procedures which afford an alien the opportunity to present his case for admissibility, through counsel, to an immigration judge.**/ The consequence of the failure of an alien to satisfy an inspector as to admissibility would change from an exclusion hearing before a neutral fact-finder to summary exclusion without a hearing or access to counsel.

The summary procedure, if enacted, could only encourage the United States to violate its obligations under Section 243(h) of the Immigration and Nationality Act and its international law correlative -- Article 33 of the Protocol Relating to the Status of Refugees, 19 U.S.T. 6223, T.I.A.S. 6577, 606 U.N.T.S 267, to refrain from refoulement. This is the duty to not expel or return a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, or membership in a particular social group or political opinion. A refugee who would experience persecution might be turned away from the border under the proposed procedures without any recourse simply because of an inability to articulate the reasons that persecution is feared, or to persuade the inspector that the fear is well-founded, or because he or she is afraid to speak to authorities.

*/ Section 121(a).

**/ Sections 235 and 236 of the Immigration and Nationality Act.

A refugee who arrives at the border after a stressful and surreptitious journey often lacks the documentary resources, the psychological reserve, and even perhaps the willingness then to persuade someone of the bona fides of the claim. Indeed, the Handbook on Procedures and Criteria for Determining Refugee Status prepared by the United Nations High Commissioner for Refugees (UNHCR) forcefully describes the difficulties experienced by aliens in pursuing asylum at the border:

> It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs. (¶ 190.)
>
> * * *
>
> [A]n applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents. (¶ 196.)
>
> * * *
>
> A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case. (¶ 198.)

A summary exclusion procedure fails to address these concerns.

A. Recommendation: Notice of the Right to Apply for Asylum and the Right to Counsel

In order to protect against refoulement, aliens must be informed prior to being barred from entry of their rights to counsel and to pursue political asylum in the United States. Specifically, inspectors should be required

to advise all prospective entrants of the substantive criteria for asylum and the procedures necessary to attain that status. The alien should be informed that (a) he or she may be entitled to asylum if s/he would be persecuted, or has a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion; (b) that the United States has a procedure for determining eligibility for asylum; (c) that the first step in this procedure is the filing of an asylum application; (d) that an asylum application may be filed at the border, and an alien may seek counsel before filing the application; (e) that an expressed desire to confer with counsel or a desire to apply for asylum will be honored and will avoid summary exclusion. This advise should be translated as appropriate and confirmed in writing. Only by notice of these rights can they be preserved in an otherwise unreviewable exclusion process.

B. Recommendation: Documentation not Required to Sustain the Burden of Proof on an Asylum Request

Since the ultimate burden of proof is on the asylum applicant, the Lawyers Committee believes it is important to specify that asylum applicants are not required to submit confirming documentation in order to sustain their burden. This is particularly so for prospective entrants at the border. It should be made clear that the alien's own statements, standing alone, can make out a case for asylum under appropriate circumstances.

C. Recommendation: The Need to Train Border Officers in Refugee Recognition

In addition, inspectors at the border must receive training in the principles of non-refoulement. They

should have clear instructions about the need to take into consideration the particular situation of the prospective entrant and the difficulties that an alien may have in presenting an asylum claim. Only if such officers are able to make a good faith effort to protect against refoulement can the right to asylum be preserved.

III. THE NEED TO PRESERVE JUDICIAL AND FULL ADMINISTRATIVE REVIEW

The jurisdiction-stripping aspect of the Simpson-Mazzoli bill is one of its most troubling aspects. The bill would eliminate petitions for review to the appropriate Circuit Courts of denials of asylum requests, and would limit the writ of habeas corpus in that regard to matters "under the Constitution." Section 123(b).

The writ of habeas corpus has two bases, constitutional and statutory.*/ The scope of inquiry under the present habeas statute, 28 U.S.C. § 2241 et. seq., extends to whether the custody violates the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2241(c)(3). The proposed legislation, by limiting the writ to constitutional matters, would preclude its use to address statutory and treaty violations, including violations of the Protocol Relating to the Status of Refugees.

There are several reasons to preserve judicial review in view of certain inadequacies in the contemplated agency scheme.

Inadequate Scope of Review by the Board.

The proposed legislation would create a six-

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*/ The constitutional core of habeas derives from the common law. Under the Constitution, courts may inquire only into the lawfulness of custody and detention. McNally v. Hill, 293 U.S. 131, 136-37 (1934); Johns v. Immigration & Naturalization Service, 653 F.2d 884, 896 (5th Cir. 1981); H. Hart & H. Wechsler, The Federal Courts and the Federal System 1427 (2d ed. 1973). Congress may add to this constitutional core by legislation. Marcello v. Immigration & Naturalization Service, 634 F.2d 964, 972 (5th Cir. 1981).

member United States Immigration Board (USIB) to hear appeals from final decisions of administrative law judges on exclusion, deportation, suspension of deportation, recission of status, and asylum cases. The Board would sit in panels of three or more, and its review would be based solely on the record of the proceedings. The Board's standard for the review of the findings of an administrative law judge would be that the findings must be regarded as conclusive "if supported by substantial evidence on the record considered as a whole." Section 107(b)(4). Presently, the Board of Immigration Appeals has full jurisdiction to review legal and factual determinations. See Woodby v. INS, 385 U.S. 276, 278 n.2 (1966), Matter of Villanova-Gonzalez, 13 I. & N. Dec. 399 (B.I.A. 1969).

In our view, the imposition of the more restrictive "substantial evidence" standard would not be appropriate in the administrative context, particularly if judicial review is also restricted.

The 14-Day Statute of Limitations is Inadequate.

The Simpson-Mazzoli bill would require aliens against whom exclusion or deportation proceedings are instituted to raise asylum claims within 14 days of the commencement of the proceedings. The proposed time limitation, however, would effectively preclude asylum for numerous persons otherwise entitled to refugee status. Fourteen days is an insufficient period of time in which to expect that an alien will be able to secure legal counsel, and prepare and submit a formal asylum request with supporting documentation.

Indeed, rather than reducing the number of asylum claims, the 14-day statute of limitations would actually encourage more such claims to be raised. It would be advisable for many aliens subject to exclusion or deportation proceedings protectively to file an application for

asylum, even if he or she did not intend to rely solely on an asylum claim. Furthermore, the 14-day statute of limitations would create a new risk of refoulement. It would subject refugees who fail to run the 14-day gaunlet to immediate return in violation of Section 243(h) and Article 33 of the Protocol.

There are no apparent economies, moreover, in requiring that an asylum claim be asserted sooner rather than later. There could be no reason to penalize a refugee who develops other immigration possibilities and to preclude an application for such benefits. Accordingly, we would propose a 30-day limitation period upon the entry of a final order of exclusion or deportation in which to assert an asylum claim. Such a statute of limitations should address the concerns of efficiency and order.

Lack of Independence of Administrative Law Judge.

The Simpson-Mazzoli bill would improve on current asylum adjudication procedures by creating a corps of administrative law judges (ALJs) who would be specially trained in international law and international relations.*/ The ALJs could not be former special inquiry officers (immigration judges), and their decisions are to be based solely upon evidence produced at the hearings, rather than upon evidence presented by the government ex parte.

Nevertheless, the proposed bill does not guarantee an independent and unbiased decision-maker, as would the court under Article I of the Constitution proposed by the Select Commission on Immigration Policy. As long as the ALJs are placed in the Department of Justice under the control of the Attorney General, decision making will inevitably be susceptible to political influence.

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*/ Section 124(a)(1).

Inadequacy of Administrative Forum in Addressing Pattern and Practice Violations as well as Constitutional Violations.

The adjudicatory system envisaged by the Simpson-Mazzoli bill is limited in scope to the consideration of individual claims. Such a system is inadequate to address pattern and practice violations of constitutional, statutory, and treaty rights, which are not amenable to challenge in the context of an individual proceeding. Nor will an administrative appeals board be likely to pass on the constitutionality of the statute under which the agency operates. Public Utilities Comm'n v. United States, 355 U.S. 534, 539 (1958); Rosenthal & Co. v. Bagley, 581 F.2d 1258, 1260 (7th Cir. 1978); 3 K. Davis, Administrative Law Treatise § 20.04 (1958) and 1980 Supp. § 20.04. The proposed adjudicatory system, therefore, would forestall challenges to the constitutionality of agency procedures. The concurrent constriction of review via habeas would eliminate altogether challenges to the lawfulness of detention under statutes and treaties of the United States, including the Protocol Relating to the Status of Refugees.

A. Recommendation: The Maintenance of Judicial and Full Administrative Review

We believe that the proposed restrictions on federal court review of the asylum process are unwarranted. Federal courts should retain full habeas jurisdiction. In particular, the writ of habeas corpus should be available in asylum cases not only "under the Constitution," but under the circumstances set forth under 28 U.S.C. § 2241 et. seq., which includes violation of the Constitution, laws, or treaties of the United States.

Furthermore, we believe that federal court jurisdiction should be preserved in cases that attack patterns and practices inimical to the assertion of asylum-related

rights. Consequently, we propose that the class action prerequisites under Rule 23(a) of the Federal Rules of Civil Procedure*/ be incorporated as the standard under which judicial review would be appropriate. Should the requirements of Rule 23 be satisfied, then federal court jurisdiction should exist. Such cases are very few in number, but they are crucial to protecting an alien's right to pursue asylum. See, e.g., Haitian Refugee Center v. Civiletti, 503 F.Supp. 442 (S.D. Fla. 1980). In conjunction with utilizing the class-action device as a subject-matter jurisdictional test for challenging pattern and practice violations, we recommend further that an organization be permitted to file such an action on behalf of a class if it can show either that its members might individually bring such an action, or that it has had a long-standing interest, commitment, and expertise in the subject-matter of the action.

Moreover, the retention of federal jurisdiction over asylum cases would not be burdensome to the courts, particularly since the number of asylum cases which have been the subject of petitions for review in the Circuit Courts, and of petition for writs of habeas corpus in the District Courts, are comparatively modest. In testimony before the House and Senate Subcommittees on Immigration, on April 20, 1982, Congresswoman Shirley Chisholm stated that from 1979 to 1981 there were only twelve appeals to

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*/ One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

the Circuit Courts of Appeals that involved asylum or 243(h) claims. The burden on the courts has been minimal.*/

B. Recommendation: Pre-Hearing Screening

While the Lawyers Committee strongly opposes the enactment of the truncated procedure in the Administration's proposed Omnibus Immigration Control Act that provides only informal review by an asylum officer, it does believe that it may be useful to have a pre-hearing screening procedure in which asylum requests are reviewed in a non-adversarial context. The requests of aliens who appear to be prima facie eigible for asylum could be granted at that stage of the adjudication process. Those requests for which more formal fact finding and expenditure of resources would not be necessary, would be removed from the process. Since pre-hearing screening would be discretionary, it could not be invoked by aliens as a matter of statutory right, and it would be used only as an efficiency device.

C. Recommendation: The Need for an Adversarial Hearing and Simultaneous Translation

The legislation contemplates a formal hearing before a specially-trained, independent administrative law judge. Leaving aside the identity of the trainers and the content of the training, we believe that additional hearing rights should be further specified, and that they should be the same as in exclusion and deportation hearings generally. In particular, provision should be made for depositions and the issuance of subpoenas -- procedures available under the current regulations. See 8 C.F.R. §§ 236.2(d), 242.14(e), and 287.5.

*/ In deportation proceedings, asylum cases would be reviewable with respect to other remedies in any event. Therefore in most of these instances the maintenance of a petition for review to the Circuit Courts would not create any additional burden.

Furthermore, specific provision should be made for the simultaneous translation of all hearing proceedings. Exclusion and deportation proceedings are unique in that the persons subject to them frequently require the services of translators. Currently, translations are frequently provided only for the questions posed to an alien and the answers that the alien gives to those questions. It is our position that the testimony of other witnesses aside from the alien, as well as legal argument and judicial rulings should be simultaneously translated so that, as a matter of basic fairness, the alien is able to appreciate what is happening in the proceedings and where he or she stands in those proceedings. The courts that have addressed the issue have found the lack of simultaneous translation to be error, but have further found it "harmless" on the facts of the particular cases because lack of simultaneous translation did not impede the development of the evidentiary record. See e.g., Tejeda-Mata v. INS, 626 F.2d 721 (9th Cir. 1980). In view of the difficulty of obtaining judicial relief, a requirement of simultaneous translation is an appropriate subject for legislative action.

D. Recommendation: The Involvement of the United Nations High Commissioner for Refugees (UNHCR)

One desirable procedural safeguard in the review of agency asylum determinations would be formal involvement by the UNHCR in the process. Such a role would assure independent review of asylum determinations.

The role of UNHCR in the determination of refugee status varies from country to country. In Belgium, the Minister of Foreign Affairs has delegated one determination of refugee status to UNHCR,[1] while in Italy, Somalia, and Tunisia, UNHCR is one of the decision-makers in the process.[2] In seven other countries, UNHCR is represented on an advisory commission that interviews applicants and makes recommendations

to the final decisionmaker.[3] In Spain, UNHCR is consulted before a decision on refugee status is made, and in Austria UNHCR may express its views prior to a decision.[4]

Other countries facilitate UNHCR oversight of the refugee determination process by various methods. Thus, for example, UNHCR is informed of all applications for refugee status in Australia, Austria, Greece, and New Zealand,[5] while in West Germany, a UNHCR representative may attend applicant interviews with the federal official who decides on applications.[6]

Proposals to codify the procedural law of asylum present an excellent opportunity to define a role for UNHCR in our own review process. Congresswoman Shirley Chisholm has introduced legislation, for example, that would create a National Advisory Council on Asylum and Refugee Policy. The Council would be an independent federal board that would serve as a clearinghouse for information relevant to asylum determinations. The Council would also assist in overseeing the asylum adjudicatory process. The Lawyers Committee supports the idea of such a board. We believe, furthermore, that a board of this type should include a UNHCR representative, either as an observer or as a full participant.

E. Recommendation: The desirability of Reopening Asylum Claims on the Basis of Additional Evidence

The Simpson-Mazzoli bill would prohibit an alien from reapplying for asylum after a denial of asylum unless the alien could show changed circumstances in the country from which he sought asylum. The amendment would also prevent an administrative law judge from reopening a proceeding at the alien's request absent such changed circumstances. These restrictions should result in a denial of asylum to applicants unable, through no fault of their own, to marshal enough evidence to establish their refugee status in the

first instance. Because of the inherent difficulties of proof, an applicant for asylum should have the opportunity to have his case reopened, or to reapply, if new evidence becomes available to him after asylum has been denied.*/

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*/ An asylum claim may be reconsidered on the basis of new elements modifying the information available at the time of the initial decision in at least nine other countries. Those countries are Australia, Belgium, Denmark, West Germany, Greece, Italy, Luxembourg, New Zealand, and Spain. Note on Procedures for the Determination of Refugee Status under International Instruments, U.N. Doc. A/AC.96/INF.152/Rev.3 (1981), ¶¶ 11, 22, 46, 66, 77, 86, 101, 126.

Footnotes

1. Note on Procedures for the Determination of Refugee Status under International Instruments, U.N. Doc. A/AC.96/INF.152/Rev.3 (1981), para. 20. Before the application reaches UNHCR, the Aliens Office of the Ministry of Justice determines whether the application has been submitted within legal time limits and whether Belgium is a proper asylum country. Id., para. 21.

2. In Italy, UNHCR is one of three members on the Joint Eligibility Commission which determines refugee status. Id., para. 75. UNHCR is an ex officio member of the Committee for Refugee Acceptance in Somalia. Id., para 122. Applicants for refugee status in Tunisia normally apply first to UNHCR for a refugee certificate, and then are recognized as refugees by the Tunisian authorities. Id., paras. 145-46.

3. UNHCR has an advisory role on the commission in Australia, Djibouti, and Portugal. Id., paras. 12, 52, 112. In New Zealand and Senegal, the UNHCR representative may submit his or her views to the commission. Id., paras. 102, 117. He or she is an active participant in the meetings of the Canadian advisory committee. Id., para. 37. In Zambia, the UNHCR representative may question applicants and record dissenting opinions. Id., para. 177

4. Id., paras. 17, 127.

5. Id., paras. 12, 17, 72, 102. UNHCR may contact and assist applicants in Algeria, Austria, Greece, Morocco, and New Zealand. Id., paras. 7, 17. 72, 92, 102.

6. Id., para. 67.

PROPOSED AMENDMENTS TO THE SIMPSON-MAZZOLI BILL

Appendix A

SECTION 106 (8 U.S.C. 1105a) is amended --

by adding at the end the following new subsections:

(d)(1) Any alien who has applied for asylum or who is the subject of an exclusion or deportation proceeding, or of an administrative proceeding reviewing an asylum determination, or an order of exclusion or deportation, may upon a showing that class action treatment is appropriate, maintain an action for declaratory or equitable relief, where there is alleged a pattern or practice of:

(A) failure to perform any act or duty which is not discretionary under law; or

(B) arbitrary and capricious action, or abuse of discretion, contrary to law; or

(C) violation of the Constitution, laws, or treaties of the United States.

(2)(A) An action may be brought on behalf of a class of aliens as described in paragraph (1) of this section by an organization

(i) each of whose members might individually bring such an action; or

(ii) which can make a clear showing of long-standing interest, commitment, and expertise in the subject-matter of the action.

(B) This subsection shall not affect the right of any organization to commence an action in its own behalf.

(e)(1) Any alien in custody under or by color of the authority of the United States, whether or not outside the territorial jurisdiction of any district court, or whether or not at a point of entry into the United States, may obtain judicial review of the lawfulness of his custody under the Constitution, laws, and treaties of the United States in a habeas corpus proceeding.

(2) A petition for a writ of habeas corpus may be filed by an organization acting on behalf of an alien or aliens described in paragraph (1) of this section.

Appendix B

SECTION 121. (a) Section 235(b)(8 U.S.C. 1225(b)) is amended --

(1) .....

(2) by striking out "to be clearly and beyond a doubt" in the first sentence and all that follows through the end of that sentence and inserting in lieu thereof the following: "to have the documentation required to obtain entry into the United States or to have any reasonable basis for legal entry into the United States, may be barred from entry into the United States, provided that --

(A) prior to barring entry, the examining officer shall advise the alien of his or her right to apply for asylum and right to confer with counsel. He or she shall be informed of the procedures for making an asylum application. He or she shall be informed that an expressed desire to confer with counsel will avoid summary exclusion. Such advice shall be confirmed in writing. Both the oral and written advice shall be provided in translation as appropriate;

(B) should the alien apply for asylum, or express a desire to apply for asylum, or express a desire to confer with counsel, he or she shall not be barred from entry and shall be permitted to make an asylum application.

Appendix C

SECTION 124.(a)(1) Subsection (a) of section 208 (8 U.S.C. 1158) is amended --

(a)(1)(B)(i) .....

(ii) An alien who has previously applied for asylum and had such application denied may not again apply for asylum unless the alien can make a clear showing that --

(a) changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence), between the date of the previous denial of asylum and the date of the subsequent application for asylum, have resulted in a change in the alien's eligibility for asylum, or

(b) additional evidence of his or her eligibility for asylum has become available to him since the date of the previous denial of asylum.

* * *

(a)(6) After making a determination on an application for asylum under this section, an administrative law judge may not reopen the proceeding at the request of the applicant except upon a clear showing that --

(A) since the date of such determination, changed circumstances in the country of the alien's nationality (or, in the case of an alien having no nationality, the country of the alien's last habitual residence) have resulted in a change in the alien's eligibility for asylum, or

(B) since the date of such determination, additional evidence of his or her eligibility for asylum has become available to the alien.

THE LAWYERS COMMITTEE
FOR INTERNATIONAL
HUMAN RIGHTS • 36 WEST 44TH STREET, NEW YORK, NY 10036, (212) 921-2160

Michael H. Posner
EXECUTIVE DIRECTOR

Arthur C. Helton
DIRECTOR
POLITICAL ASYLUM PROJECT

November 8, 1983

Alan C. Nelson
Commissioner
U.S. Department of Justice
Immigration and Naturalization Service
425 Eye Street, N.W.
Washington, D.C. 20536

Dear Commissioner Nelson:

I notice that in the written statement that you submitted on October 28, 1983, in Miami to the Senate Subcommittee on Immigration and Refugee Policy you refer to a "continuing problem" in locating pro bono attorneys to assist Haitian asylum seekers under the final judgment in Louis v. Nelson. I just wanted to let you know that there are only about 150 Haitians who are still in need of representation out of the class of about 1700. Those 150 are divided about equally in Florida and New York City. I am sure that you would agree that the response of the private bar in this regard has been magnificent in coming forward to provide pro bono representation to the Haitians.

Sincerely,

Arthur C. Helton

ldl

Senator SIMPSON. Mr. Horlander, proceed please.

STATEMENT OF REV. WALTER F. HORLANDER

Mr. HORLANDER. My name is the Reverend Walter F. Horlander and I am the executive director of the Florida Council of Churches. The Florida Council of Churches is a cooperative agency of 19 denominations in the State of Florida.

The Florida Council of Churches works on immigration matters in cooperation with Church World Service, which has testified before this subcommittee in Washington on past occasions. Church World Service has maintained an office in Miami since April 1960 and has been working throughout the region since that time assisting refugees and immigrants and enabling churches' responses to immigration issues and needs. The council also has worked with other voluntary church agencies with regard to immigration matters on the State level.

It is a pleasure for me to address you today with respect to an issue of great concern to Florida churches, that of mass immigration. Certainly, in the past—most notably with the 1980 Mariel boatlift—we have undergone considerable trauma as Floridians as we strove to cope with the sudden influx of refugees, sought to reunite them with relatives and place them with sponsors, worked with the State to address concerns regarding the impact of the mass exodus, and endeavored, to the degree possible, to minimize inappropriate or undesirable disruptions in the lives of Floridians, as well as America at large.

In this vein, let me state, first of all, that it is our view that careful planning should be done now in order that we might never again be faced with the chaos and, to be frank, the disrespect for humanity which was part of some earlier immigration emergencies. We will be proposing principles which we think should guide the development of procedures for coping with future immigration emergencies.

Second, mass immigration is an international, and thus a foreign relations, issue. Diplomacy, as we will elaborate below, is an important ingredient in any response to immigration emergencies.

However, let the record be clear that we do not believe the enactment of emergency powers is appropriate or even necessary in this case. Emergency planning is needed and desirable. Appropriate emergency procedures developed administratively as a part of a plan should be encouraged. We want to urge that administrative procedures and planning be a priority and we want to contribute to their development. But legislated emergency powers such as those contained in the Immigration Emergency Powers and Procedures Act of 1983—powers which in some cases restrict the normal activities of U.S. citizens and in others involve possibly the deprivation of certain rights—are, in our view, unwarranted. We are confident immigration emergencies can be adequately handled without recourse to such extreme measures.

NONEMERGENCY POWERS IN S. 592

It should be noted, first off, that S. 592 is not solely an emergency powers bill. Section 3 addresses penalties which we read to

apply even in the absence of a declared emergency. Certainly section 4 is explicit in proposing a summary-exclusion procedure which would apply unless an immigration emergency has been declared.

Churches, in their part in the immigration debate over the past few months and years, have had real problems with certain probable effects of summary exclusion. We believe there is a genuine danger in such a process of unwittingly barring genuine refugees from entering the United States. We have found in Florida, for example, that refugees often do not possess the wherewithal at the time of arrival to articulate their asylum claims in the requisite technical vocabulary which would permit their entry to pursue those claims.

Permit me to relate one instance in which Florida churches and Church World Service were involved here in south Florida a few years back.

We were aware that the Immigration and Naturalization Service [INS] had in good faith asked a group of newly arrived Haitians if they intended to apply for asylum. The Haitians, to the surprise of most, responded strongly in the negative. Further investigation by churches revealed that the INS interpreter had used the Haitian-Creole transliteration of asylum in interviewing the Haitians, which means mental, rather than political asylum.

Should summary exclusion be enacted at some point, we would hope at a minimum that those seeking entry would be informed of their right to counsel, to a hearing on their case, and to apply for asylum.

EMERGENCY POWERS

We will comment on three of the proposed emergency powers.

First, section 240B eliminates court jurisdiction over administrative determinations regarding admissibility or asylum for those aliens covered by the emergency. This presents a number of difficulties.

We believe all asylum applicants, for example, should be treated equally under the law regardless of whether they entered singly or as part of a mass immigration. If anything it would seem that access to the courts would be most needed in immigration emergencies when the chaos of such an event would naturally create a higher prospect of procedural violations than would otherwise be the case under normal conditions.

Permit us the general comment that many of the proposals for streamlined adjudication processes particularly in the asylum area appear to us to be based on the inaccurate perception that the courts are a major bottleneck. In fact, only just over 1 percent of asylum cases actually make it to the courts. Federal courts, over the past few years, have demonstrated an increasing willingness to dismiss frivilous actions and impose penalties (see *Muigai* v. *USINS*, 682 F.2d 334 (2nd Cir. 1982)). The backlog, as a recent Immigration Service study reveals, has been administrative.

Second, section 240B also calls for the detention of individuals pending a final determination of admissibility or pending release on parole or pending deportation if the alien is found excludable.

Further, the decision to detain, which is made discretionary on the part of the Attorney General, is not subject to judicial review, except in narrowly defined habeas corpus proceedings.

Florida has suffered the indignity of extended detention by Federal authorities of Haitians and others seeking asylum. The images provided the Nation by the media of Haitians languishing at the Krome Avenue INS facility for months on end in the south Florida heat reflected badly on our traditions. Most were attempting to apply for asylum. They had committed no crime. Yet they were imprisoned for over 1 year. Our churches were prompted to protest this injustice rendered by the U.S. Department of Justice and we so testified in this Federal court. Eventually, Federal Judge Eugene Spellman here in Miami took the proper step of ordering an end to the detention.

We in no way wish to imply that those entering the United States as part of a mass immigration should be immediately released into our communities. We would expect careful screening for excludable individuals. Additionally, it is in our interest as well as the entering individuals that they be released only to the care of viable sponsors and not just randomly or haphazardly. Such should be a matter of proper public policy and should not lead to or reinforce prolonged detention.

Finally, the bill also explicitly allows for interdiction and the enforcement of aspects of U.S. immigration law on the high seas, which is at least a legally questionable practice. I use the word "aspects" here intentionally. Certainly there is no way possible on the high seas to ensure that all relevant provisions of the law can be honored in such a situation. It is difficult to imagine in particular that protections contained in the Immigration and Nationality Act such as the right to counsel—not at the Government's expense—or to a hearing before an immigration judge can be honored in the course of an interdiction on the high seas.

EMERGENCY PLANNING AND PROCEDURES

Our questioning of emergency powers in no sense diminishes our enthusiasm and support for planning and procedures which would allow us to handle the next immigration emergency much better than the last one Florida experienced. Whether we face challenges in Florida or at our land borders, we must be prepared.

As you may know, Florida churches were right in the thick of responding to the 1980 boatlift, as well as the mass influx in the 1960's. In light of this experience, we want to offer a few observations—principles if you will—which we think should be kept in mind in guiding the emergency planning.

First, a good number, if not most of those entering the United States in sudden mass movements are seeking asylum. At the very least, many of them have close family here.

This fact suggests a particular attitude toward mass immigration. We in Florida are the first to suggest that immigration movements should be well managed and with careful screening. However, let us also be the first to suggest that our starting principle in managing such emergencies should not be keeping everybody out, but rather should be processing in those who are qualified to enter.

I was intrigued by a discussion reported to me which took place last month in the House Judiciary Committee which I believe supports our perspective. The discussion took place in the context of an amendment by Representative Bill McCollum of Florida regarding Cuban-Haitian entrants. The consensus of the committee was that the Marielitos had indeed entered the U.S. legally. While this may be a difficult conclusion to accept for some, the fact remains that the bulk of those who were part of the Mariel boatlift were attempting to come to the United States to seek asylum—a legitimate basis for entering this country.

Second, we have already mentioned the need for careful screening. However, such screening was obviously deficient in 1980 in some instances. In recommending careful screening, we refer not only to the need to respect the relevant exclusions of the Immigration and Nationality Act. We should, in addition, responsibly assess the needs and profiles of the individuals eligible for admission. For example, an individual with particular emotional needs should be competently analyzed so that he or she can be placed in a setting which is responsive to those needs.

A screening process could be composed of a number of components, including basic orientation to life in the United States. Such elementary orientation in the past has often been performed as an afterthought, when a person has already been placed in a community and with a sponsor.

Third, we join with other Floridians who state that there is a strong Federal responsibility in immigration and immigration emergencies. In meeting this responsibility, the Federal Government should ensure that adequate financial and other resources should always be readily available to respond to sudden mass migrations. Such was not always the case in 1980 and we are still sorting out the resulting problems 3 years later. Numerous Florida officials, including Senator Chiles, have in the past spoken to this problem so I need not be repetitive in this respect here.

Finally, we recommend that planning should begin now and that moneys should be authorized and appropriated for that purpose. We think it important that a Federal agency be given lead responsibility to respond to future immigration emergencies and to begin the necessary interagency planning now. Further, this responsible agency should plan in coordination with the private sector and others potentially affected by immigration emergencies. Emphasis, obviously, should be given to consultations in likely port-of-entry communities.

History suggests the advisability of so designating a lead Federal agency. After the 1975 Indochinese influx, for example, we thought we had learned a few things about dealing with migration emergencies. Some experience was accumulated in this area by INS, the Department of State, and others.

However, in 1980, we "threw the baby out with the bath" in giving responsibility to the Federal Emergency Management Agency [FEMA]. FEMA had no experience in the area and knew very little of the lessons of 1975 and the 1960's. If it had, FEMA might have done things differently.

Thus, it is important that a lead Federal agency be designated and that that agency be given advance opportunity to benefit from

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past experience, as well as begin to coordinate with the private sector.

THE IMPORTANT ROLE OF DIPLOMACY

Mass migration, as we have said, is an international, and thus a foreign relations, issue. The use of diplomatic channels in the past has contributed to the control of past emergencies both in this part of the world as well as in Europe, Asia, and elsewhere.

A prominent example is the experience of 1965 in which a flotilla of refugees appeared in south Florida. Our Government was successful, in working through the Governments of Switzerland and Czechoslovakia in signalling immediately to Cuba that we would not abide a disorderly influx. We were able, then, through diplomatic means, to reach an understanding which resulted in a program of orderly departure in which the interests of both the United States and Cuba were served.

We are not suggesting that this formula is appropriate to every case. However, it does underscore that properly effected diplomatic measures can bring order and control to an otherwise chaotic situation running counter to our national interests.

We have been impressed, incidentally, with some of the work in this field by Prince Sadruddin Aga Khan the former U.N. High Commissioner for Refugees. Prince Aga Khan has been in recent years conducting a study on massive exoduses for the U.N. Economic and Social Council's Commission on Human Rights. In one of his studies he observes:

"(T)here is an obvious lack of contact in man-made exodus situations between the authorities of the country of origin and those of the country or countries of asylum".[1]

The study suggests attention to this failing and urges the development of early-warning systems which would trigger efforts to ward off a mass exodus or at least to allow it to occur in an orderly fashion.

CONCLUSION

We want to thank you again for this opportunity to express the views of the Florida churches regarding immigration emergencies. We want to be a continuing resource in this area, along with Church World Service, and sincerely hope that our comments will be taken to heart.

[Material submitted for the record follows:]

APPENDIX A.—RESOLUTION ON HAITIAN REFUGEES

Whereas the migration of Haitians to Florida in the past eight years involving upwards of 40–50 thousands people is a fact to which the Florida Council of Churches should be responsive;

And whereas assistance to and resettlement of Haitians by churches and others has been hindered by obstructive governmental policy,

And whereas Haitians do not enjoy equal immigration status with other refugee groups;

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[1] Sadruddin Aga Khan, "Question of the Violation of Human Rights and Fundamental Freedom in Any Part of the World, With Particular Reference to Colonial and Other Dependent Countries and Territories," United Nations Economic and Social Council, December 31, 1981. p. 56.

And whereas Haitians experience peculiar acculturation difficulties in the United States due to their language and racial background;

Be it resolved, That the Florida Council of Churches communicate with the appropriate governmental agencies our conviction that governmental agencies should welcome Haitians to our shores as we have refugees in the past;

That is special communication be sent to immigration and Naturalization Service and all appropriate federal agencies urging them to treat Haitians at least as humanely as Cubans and others seeking asylum in this country.

That the Florida Council of Churches consider Haitians in Florida to be genuine refugees since their desperate situation appears to be mainly caused by a severely repressive political atmosphere, and

That member churches respond to the obvious and immediate needs of these refugees, i.e., especially through participating in resettlement programs in their behalf.

FLORIDA COUNCIL OF CHURCHES RESOLUTION ON EL SALVADOR

Whereas the gospel of our Lord Jesus Christ calls the church to preach good news to the poor, release to the captives, liberty for the oppressed and the coming of God's just and peaceable kingdom amid the kingdoms of this world, and

Whereas the people of El Salvador are suffering unjustly the pain of poverty, repression of political freedom, denial of basic human rights and violent death at the hands of forces from the right and the left, and

Whereas an estimated 250,000 persons have been forced to leave their homes and belongings to seek refuge in the mountains or in neighboring countries, and

Whereas the Christian church in El Salvador, standing with and for the poor in faithfulness to the gospel, has endured intense persecution in the past two years, martyrdom of priests and pastors, nuns and layworkers, and

Whereas the current ruling parties may not adequately represent the people of El Salvador, and are accused of collaborating with private paramilitary forces which continue serious violations of human rights, and

Whereas US economic interests have contributed over many years to the problems of inequality and poverty in El Salvador, and the current administration in the United States has maintained a policy of increased military aid and the deployment of US military advisors to further arm, train, and support the forces of the current government in El Salvador, and

Whereas the struggle has developed to a point where some El Salvadorans have appealed to other nations, especially in Central America, for military assistance, and

Whereas the problems in El Salvador are not likely to be solved by military force either from the right or the left, and

Whereas many Chistian Churches in the United States have studied situation in El Salvador, have received appeals from Christians in El Salvador, and have responded with prayers of support for the people of El Salvador and with pleas to stop all military aid,

Whereas we, the Florida Council of Churhes meeting on April 14, 1982, instruct the executive director:

1. To send a letter to the Bishop of San Salvador, Monsignor Arturo Rivera y Dams, and to the Baptist Association of El Salvador thanking them for their courageous stand for justice with the people of El Salvador and expressing our deep sense of community with our sisters and brothers who are caught in the present conflict.

2. To send a letter to President Reagan and Secretary of State Haig asking our government to:

(a) Immediately halt all military aid, military advisors, and Foreign Military Sales Credits to El Salvador, and

(b) Approach other interested parties, especially the Soviet Union, Cuba, Guatemala, and Nicaragua, to stop all military intervention and arms shipments to anyone in El Salvador, and

(c) Make serious and intense efforts to find and support a mediator(s) from a nation(s) not now militarily involved, to conduct negotiations between the political factions in El Salvador toward a peaceful and just resolution of this conflict, and

(d) Grant temporary refugee status to El Salvadorans who have fled their country, and immediately stop the illegal deportations by the Immigration and Naturalization Service.

3. To encourage judicatories to hold educational forums on El Salvador and on the use of military and economic assistance in developing nations.

4. To encourage individual congregations to:

(a) Write their elected officials asking them to support legislation that prohibits US military aid to El Salvador.

(b) Support generously the efforts of the church on behalf of the homeless, both inside and outside of El Salvador, through gifts to Refugee/Disaster Funds.

(c) Pray for the people of El Salvador that they may hold to their faith through this time of deep suffering and especially for those Christians who have not yet returned violence being used against them.

APPENDIX B.—RESOLUTION ON ASYLUM SEEKERS

Whereas the Gospel of our Lord Jesus Christ calls the Church to proclaim good news to the poor, release to the captives, liberty for the oppressed and the coming of God's just and peaceable kingdom amid the kingdom of this world, and

Whereas 40,000 Salvadorans have been killed in the last four years, and 5,000 Guatemalans in the past year, and

Whereas First Asylum Seekers in the State of Florida and throughout the continental United States have become a major target of increased U.S. Border Patrol and United States Immigration and Naturalization Service (INS) activities, and

Whereas the United States Immigration and Naturalization Service (INS) considers refugees from those two countries and Haiti to be "economic refugees" and therefore ineligible for entrance into the U.S., and

Whereas the United States Immigration and Naturalization Service has repeatedly taken the position that when these persons are arrested it is not the responsibility of the United States Immigration and Naturalization Service (INS) to advise them of their legal rights, and

Whereas an effective means of guaranteeing constitutional due process and equal protection is not provided similar to that accorded the Indochinese, the Cubans, and others who have fled oppression through the years, and

Whereas the United States Government officials have repeatedly refused to honor the Constitution of the U.S. and international legal obligations for those who seek safe haven, and

Whereas the vast majority of Central Americans apprehended are encouraged to sign "voluntary deportation forms" without knowledge of their legal rights, therefore

Be it resolved, That the Florida Council of Churches call upon the President of the United States to halt immediately the mass deportation and repatriation of refugees to El Salvador, Guatemala, and Haiti until due process and equal protection is provided, and

Be it further resolved, That the Governor of the State of Florida be requested to assist in investigating the allegations that state, county, and local law enforcement officers have been involved in the apprehension of these Asylum Seekers, and

Be it further resolved, That member communions of the Florida Council of Churches be encouraged to continue their commitment to meet the social, legal, and political need of all refugees and to increase constituency education and advocacy for people seeking asylum.

Adopted by the Florida Council of Churches, April 8, 1983.

Senator SIMPSON. Mr. Hooper.

STATEMENT OF MICHAEL S. HOOPER

Mr. HOOPER. Thank you, Mr. Chairman, for holding these oversight hearings to examine proposed presidential emergency powers with respect to immigration, and for inviting the views of the National Emergency Coalition for Haitian Refugees. Our testimony today specifically considers the Immigration Emergency Powers and Procedures Act of 1983 (S. 592), proposed by Senator Chiles.

My name is Michael S. Hooper and I am executive director of the National Emergency Coalition for Haitian Refugees, which is composed of over 45 prominent civil rights, human rights, labor, Haitian, religious, and other national voluntary organizations. Our membership includes all the Haitian and North American organizations working nationally to ameliorate the desperate plight of the Haitian refugee boat people, as well as those organizations as-

sisting the refugees locally in both New York and here in southern Florida.

The grave concern of the coalition and our constituent members with this legislation arises from our specific involvement since 1979 in all aspects of the national crisis created by the unprecedented official treatment that the Haitian boat people have received, and from our deep commitment to the necessary and extremely difficult task of reforming our nation's immigration laws.

This legislation asks Congress to grant to the President extraordinary and ill-defined powers to suspend heretofore guaranteed fundamental rights because of the spectre of a future immigration emergency. We conclude that this grant of power without congressional oversight to the President and the Attorney General will facilitate wholesale violations of fundamental protections and rights of noncitizens and citizens alike. Provisions of this bill will cause immeasurable and needless suffering to those persons caught in its wake, and it may fuel divisiveness between the people of our country. This bill does not address the underlying problems that have led to refugee emergencies, it's implementation may provoke new emergencies, and it is entirely unnecessary as the President arguably possesses many of these powers already under section 212(F) of the immigration and Nationality Act of 1952.[1]

Before detailing the specific reasons why we oppose this legislation, it is perhaps useful to recall two lessons from the Mariel flotilla of 1980 and the recent Haitian program crafted by the Immigration and Naturalization Service [INS].

In hearings regarding an earlier version of this act, the Mariel flotilla and its complicated aftermath provided the justification for this extraordinary legislation.[2] Senator Chiles has characterized the Mariel flotilla as a war fought by Mr. Castro and as a deliberate and premeditated act of invasion.[3] This convenient scenario is not entirely accurate and should not lead us to ill-considered, quickfix legislation. Mariel was not a natural disaster that happened to the United States, rather it was in part a consequence of our government's insistence on using refugee policy for political purposes. We had perfectly adequate laws on the books that could have controlled the Mariel emergency in an orderly way, had our Federal Government acted decisively. In the words of Pulitzer Prize-winning journalist John Crewdson, "the U.S. Government's inability to decide whether to denounce the Cuban invasion or to encourage it created a paralyzing schizophrenia."[4] More than any of the substantive criticisms which follow, the fact that the Mariel flotilla need not have developed into the emergency that it became clearly obviates the need for this extraordinary legislation.

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[1] 8 U.S.C. 1182 (F), 212 I.N.A. "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be deterimental to the interest of the United States, he may by Proclamation, and for such a period as he shall deem necessary, suspend the entry of all aliens or immigrants or nonimmigrants, or impose on the entry of aliens any restrictions that he may deem to be appropriate."

[2] Hearing before the subcommittee on immigration and refugee policy, U.S. Senator Judiciary Committee, 97th Cong., Sept. 30, 1982.

[3] Immigration Emergency Powers," hearing before the subcommittee on immigration and refugee policy, U.S. Senate Committee on the Judiciary, 97th Congress, September 30, 1982, p. 8.

[4] Crewdson, John, "The Tarnished Door," Times Books, 1983, p. 60.

The Haitian program devised by the Immigration and Naturalization Service provides us with a convenient prototype of the proposed Immigration Emergency Powers Act. Despite the essentially uncontroverted documentation of respected human rights organizations concerning the cumulative abuses of 25 years of Duvalier family rule in Haiti, those Haitian boat people who risked their lives to seek political asylum in southern Florida were greeted with harsh and discriminatory treatment unprecedented in our Nation's history. As the Federal District Court for the Southern District of Florida found:

> (T)he Haitians came here with the expectation that they should reach a land of freedom . . . What they found was an Immigration Service which sought to send them back to Haiti without any hearing by an immigration judge on their asylum claims . . . and a systematic program designed to deport them irrespective of the merits of their asylum claims . . . They came to a land where both local officials and private groups were compassionate, indeed where the President had once promised that the government would be as compassionate as its people, and then their applications were arbitrarily denied en masse by a somewhat less than compassionate I.N.S.[5]
>
> The Haitian asylum claims were prejudged as lacking any merit . . . An expedited process was set up for the sole purpose of expediting review of Haitian asylum applications, and expelling Haitians from the United States. By its very nature and intent, that process was prejudicial and discriminatory. In its particulars, the process violated the Haitians' due process rights.[6]

This relatively small group of refugees from a government of undeniable harshness suffered innumerable other deprivations:

They were indefinitely detained in intolerable conditions;

They were deprived of the fundamental right to consult with counsel and the right to be informed of the right to apply for political asylum in our land based on their fear of persecution in Haiti;

Their asylum claims were judged by disparate and improper standards;

And some had their flimsy sailboats returned to the Haiti from which they fled, without being allowed to fully exercise their rights to claim asylum in the United States.

Pursuant to a Federal court decision here in Miami on June 29, 1982, the mass detention program announced by the Attorney General on July 31, 1981, was declared unlawful, and the refugees were finally released to sponsors in over 20 States by the end of November 1982. On April 12, 1983, the U.S. Court of Appeals for the 11th Circuit, in a landmark decision, upheld the lower court's finding that the official policy of detaining Haitians was illegal, and went further, finding that the detention program was unconstitutional and discriminatory.

The constituent member organizations of our coalition are united in our desire to secure substantive and procedural due process of law and humane treatment for the Haitian refugee boat people.[7] We joined together in the resolve that these boat people have accumulated substantial equities during their illegal detention, and we

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[5] Haitian Refugee Center v. Civiletti, 503 F. Supp. at 451-2.

[6] Id. at 510-11

[7] It is well-settled that as excludable aliens these boat people are protected by the due process clause of the fifth amendment (*Mathews* v. *Diaz*, 426 U.S. 67 at 77, (1976)), and thus are entitled to due process when pursuing their rights to petition for political asylum (*Haitian Refugee Center* v. *Smith*, No. 80-5683 (5th Circuit, May 24, 1982), affirming in part *Haitian Refugee Center* v. *Civiletti*, 503 F. Supp. 442 (S.D. Florida 1980)).

believe that they must be granted some secure legal status in this country.

There already has been a trial-run for this emergency powers legislation, as policies recommended by the act already have been applied to the Haitian boat people with disastrous results. The U.S. Government's Haitian Program has been unequivocally condemned by the courts, and by domestic and international public opinion. Indefinite detention, summary exclusion, and the interdiction of refugee boats violate our domestic and international legal obligations, cause untold misery, and are vastly expensive. As a nation we can ill afford to institutionalize such a policy.

We additionally are opposed to this legislation because of:

First, the vague authority given to the President to exercise almost limitless discretion to find the existence of triggering criteria necessitating the declaration of an immigration emergency (sec. 240A(a));

Second, the authorization to summarily exclude aliens, including potential asylum applicants, from the United States on the decision of one immigration inspector without special training (sec. 240B(a)). This proposal appears intended to apply even if the President has not declared an immigration emergency (sec. 4 amending sec. 235(b)(2)), INA (see section I infra);

Third, the excessive authority to detain for an indeterminate period of time persons awaiting asylum hearings or other processing, and, the authority to so detain persons at any Federal or State facility and to move them from facility to facility at will (sec. 240B(a)(4)(A)) (see section II infra);

Fourth, the authority to interdict on the high seas boats carrying potential asylum applicants and to return them to the country from which they fled (sec. 240B(a)) (see section III Infra);

Fifth, the virtual elimination of judicial review in asylum proceedings, and, the stripping of the jurisdiction of the courts to review the reasonableness of other provisions of the act (sec. 240B(a)3(A)(E)) (section IV); and

Sixth, the excessive grant to the Attorney General of the power to restructure in his complete discretion the rights of asylum applicants and the procedures that apply to them (sec. 240B(a)3(B)).

ADVERSE IMPACT OF AUTHORIZING THE SUMMARY EXCLUSION OF FOREIGN NATIONALS, INCLUDING POTENTIAL ASYLUM APPLICANTS, FROM THE UNITED STATES

Section 240B of the proposed act provides that the Executive can utilize various powers, including the power to summarily exclude arriving aliens, with or without a declaration by the President that there is an immigration emergency based upon a determination that a mass influx of undocumented aliens is imminent.[8]

We are very concerned that the proposed emergency powers legislation permits the summary exclusion of asylum seekers among others if they attempt to cross the border of the United States and are unable to immediately demonstrate a bonafide claim to asylum.

[8] The declaration of an "immigration emergency" extends automatically for a period of 120 days, and is extendable for consecutive periods of like duration.

Aliens with valid claims for asylum, but without an understanding of our laws or an opportunity to obtain the assistance of legal counsel, could be summarily excluded from our country and forcibly returned to persecution. Two Federal courts have held that notice of the right to claim asylum is fundamental.[9]

Under section 4 of the Chiles emergency powers bill—amending section 235(b) of the INA—the on-the-spot decision of an immigration inspector without any special training could result in the deportation of a bonafide refugee, whether or not an immigration emergency had been declared. Specifically, an alien could arrive at the border and say all the required magic words requesting asylum based on a well-founded fear of persecution, but if the alien did not present the appropriate identity documents, or the inspector did not believe his story, the refugee could be summarily deported, possibly to his death, with absolutely no recourse to the courts or any review mechanism. Recent experience has clearly demonstrated that it would be unwise to empower the INS inspector with the authority to make this type of life and death decision.

The practice of summary exclusion in such cases violates our fundamental traditions of due process and of providing a haven for the persecuted, as well as our legal obligations of nonrefoulement under international law.[10] A refugee fleeing persecution will obviously not possess any documentary resources, and they will normally feel themselves to be in a particularly vulnerable situation in submitting their case to authorities of a foreign country using unknown legal concepts.[11]

The experience of the Haitian refugees clearly illustrates the genuine dangers involved in barring, even unintentionally, from our country refugees who are unwilling or unable to immediately articulate the basis of their asylum claim because of an absence of the rule of law in their home country. Many observers, including representatives of the Department of Justice and the International Commission of Jurists, have described Haiti alternatively as "the most oppressive regime in the hemisphere" or the "most ruthless and oppressive regime in the world."[12] A Federal district court in Miami found that for the past 25 years the Duvalier family has ruled Haiti through "pervasive oppression of political opposition which uses prisons as its torture chambers and Tonton Macoutes as its enforcers."[13] The regime is based on its secret police forces who have enforced repression and terrorized the population with actual and threatened violence and imprisonment, with complete disregard for the rule of law, legal procedures, or fundamental human rights.[14] While Haiti is generally recognized to be a miserably poor

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[9] *Jean* v. *Nelson*, 711 F. 2d 1455 (11th cir.) 1983, *Orantes-Hernandez* v. *Smith*, 541 F. Supp. 351 (C. Dist. Calif.) 1982, *Nunez* v. *Baldin*, 587 F. Supp. 578 (F. Dist Tex.) 1982.

[10] Article 33 of the U.N. Convention on the Status of Refugees.

[11] The Handbook on Procedures and Criteria for Determining Refugee Status of the U.N. High Commissioner on Refugees stresses:

"A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurage account of his case." (Paragraph 198).

[12] Cited in *Haitian Refugee Center* v. *Civiletti*, 442, 475.

[13] Id. at 475.

[14] See generally the reports for the Lawyers Committee for International Human Rights by Michael S. Hooper, Esq.:

country, a Federal court has found that "much of Haiti's poverty is a result of Duvalier's efforts to maintain power." [15] In the face of these conditions, over one-eighth of Haiti's population has fled from their homeland, and a small part of this diaspora has applied for political asylum in the United States.

The heritage of our country as a haven for refugees seeking safety, and the strength of our beliefs in a system of laws, demand that we not seek refuge in the legal formalism that a quick interview by an untrained immigration agent would guarantee the protection of fundamental rights. It is counterintuitive to expect a terrified Haitian peasant or opposition politician from Port-au-Prince to confide to the first uniformed American secrets that would have resulted in imprisonment or death in Haiti. Persons fleeing government whose only rule of law is the arbitrary terror of the security forces cannot logically be expected to articulate a claim for political asylum immediately upon reaching the United States. The spectre of deserving refugees deported to persecution without cause is reason enough to reject notions of institutionalizing summary exclusion.

PROSPECT OF INDETERMINATE OR INDEFINITE DETENTION

Under the proposed emergency powers legislation, the prospect of indeterminate or indefinite detention looms as a real possibility for many affected aliens. Section 240B(a)(4) provides the detention of every alien, except those who beyond a reasonable doubt are entitled to be admitted into the country, pending a final determination of admissibility, parole, or deportation. Nor is this decision to detain, over which the Attorney General exercises wide discretion, subject to court review except in narrowly defined habeas corpus proceedings.

This extended mass detention policy may result in an inhumane and unnecessary repetition of the recent ordeal of the Haitian refugees. It would also mark a stark departure from established practice and particularly threaten to undermine the exercise of fundamental rights by those seeking asylum in our country. Such an extended detention policy would also result in scathing attention being paid to those areas where the detention camps were located. Residents of southern Florida already know the impact of the national reputation of being the place where the Haitians were imprisoned. In a study published in June 1983, the U.S. General Accounting Office concluded that "the cost and the adverse humanitarian effects of long-term detention do not make it attractive as a normal way of dealing with undocumented aliens seeking asylum." [16] Yet, this legislation grants the authority to detain per-

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"Violations of Human Rights In Haiti", November 1980.
"Recent Violations of Human Rights in Haiti", February 1981.
"Report on the August 1981 Trial and November 1981 Appeal of 26 Political Defendants in Haiti", March 1982.
"Violations of Human Rights in Haiti June 1981–September 1982," November 1982.
"Haiti—Report of a Human Rights Mission", August 1983.
See also A. Stepick, "Haitian Refugees in the U.S.," Minority Rights Group, 1982, p. 6.

[15] *Haitian Refugee Center* v. *Civiletti*, 509.

[16] U.S. General Accounting Office, "Detention Policies Affecting Haitian Nationals," Report No. GAO/GGD–83–68, June 16, 1983.

sons "in any prison or other detention facility or elsewhere, whether maintained by the Federal Government or otherwise, * * *" (section 240B(a)(4)(a)).

Traditionally, aliens seeking admission to the United States have not been detained after a short processing period, unless they were demonstrated to be security risks or likely to abscond. The traditional release policy was recognized in 1950 in an opinion by Justice Clark who had been Attorney General during the drafting of the Immigration and Nationality Act:

> The parole of aliens seeking admission is simply a devise through which needless confinement is avoided while administrative proceedings are conducted. . . Physical detention of aliens is now the exception, not the rule, and is generally employed only as to security risks or those likely to abscond * * * certainly this policy reflects the humane qualities of enlightened civilization.[17]

This traditional emphasis on releasing aliens pending the completion of their proceedings is noted in the INS field inspector's Handbook,[18] and as most recently confirmed in sworn testimony by two former INS General Counsel, Sam Bernsen and Charles Gordon, at the trial of *Louis* v. *Nelson*, held in the Southeren District of Florida.[19] There is little dispute that a liberal release policy based on obvious and overwhelming humanitarian concerns is well established in the United States.

A policy of indefinite detention further threatens the rights of applicants for political asylum. Detention greatly reduces the possibility that an asylum applicant can benefit from effective assistance of counsel and can adequately complete an application for political asylum. It is clear from the experience of the Haitian boat people that indefinite detention directly interferes with the exercise of the statutory right of aliens to request political asylum in the United States. This interference may constitute a violation of article 31 of the protocol relating to the status of refugees which prohibits the imposition of penalities on asylum applicants on account of their illegal entry or presence, as well as unnecessary restrictions on their movement.

Detention also interferes with an alien's right to apply to political asylum under U.S. and international law, through greatly complicating the process of collecting the necessary identification and documentation to support an asylum claim. There is a great likelihood that the detention power would be used selectively against nationals from some countries and not against those from others. Two Federal courts have recently found illegal the detention policy implemented by the INS in May 1981 which affected the Haitians disproportionately. In April 1983, the U.S. Court of Appeals for the 11th Circuit went further, finding that this selective detention was unconstitutional and discriminatory.

The treatment of the Haitian refugee boat people since 1979 provides numerous examples of how the conditions of indefinite detention can be so onerous as to force an asylum applicant to waive his or her right to apply for asylum and return home voluntarily.

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[17] Mailman, "Reagan's Policy on Haitian Refugees," New York Law Journal, October 7, 1981, p. 1., col. 1.
[18] I.N.S. Field Inspector's Handbook, Ch. 19, Secs. 1 and 2, annex E.
[19] Case No. 18-1260-CIV-EPS.

Ironically, one of the most eloquent descriptions of why continued detention violates the Protocol Relating to the Status of Refugees and the earlier Convention, was provided by the U.S. Government itself in testimony before Congress while the protocol was being debated in 1968:

> The Protocol—like its predecessor, the 1951 Convention Relating to the Status of Refugees—is a determined effort by the United Nations to secure world-wide agreement that refugees everywhere must be given the protection and certain basic rights which are essential if they are to be given the chance to live as self-supporting and self-respecting human beings. We are all too familiar with the tragic human and political consequences which derive from situations in which refugees are denied these fundamental human rights, and instead are kept in camps indefinitely, and are thus committed to dependency and denial of meaningful existence.[20]

Beginning in May 1981, Haitian asylum applicants arriving in the United States were placed in detention, first in the Krome Avenue North Detention Facility in Miami and, as protest concerning the overcrowded and unsanitary conditions there grew, in 10 Federal prisons and INS facilities in 5 States and in Puerto Rico. In July 1981, Attorney General William French Smith formally announced the administration's new immigration program and detention policy. By September 1981, over 2,700 Haitains, and only Haitians, were held in 10 isolated locations, far from attorneys, interpreters, or any contact with the Haitian community. In all save the most formalistic of worlds they were thus effectively denied the right to apply for asylum in the United States.

According to one court, indefinite detention appeared "intended to treat Haitians as poorly as permissible during their stay in the United States so that others would be deterred from immigrating." [21] Detention under inhumane conditions that would never be tolerated for convicted criminals was used to simply force the Haitians to leave the United States without completing their asylum applications.

The punitive long-term detention of the Haitian refugees was further exacerbated by the substandard conditions at the prisons where they were detained for 14 to 18 months. I have personally visited most of these facilities as have representatives of our member organizations.

Typically, these facilities—designed only for short-term detention—were overcrowded and underequipped, often resembling concentration camps. While conditions at the Krome North facility shocked many Floridians in the fall of 1981, conditions at others facilities were indisputably worse. Citing the Immigration Service and the public health service as authority, the General Accounting Office has concluded that "the Haitian detainees, for the most part, were housed in facilities that were unsuited for long-term care. In addition, services and basic amenities were minimal. The mental health of long-term detainees was perhaps the most serious problem with which the public health service could not effectively deal." [22] During the indefinite imprisonment many refugees exhibited symptoms of physical and psychological distress and there were 29 suicide attempts reported by the National Institute of

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[20] Appencix to Sen. Exec. K. 90th Cong., 2d sess., at p. 5 (1968).
[21] *Haitian Refugee Center* v. *Civiletti*, 514.
[22] Op. Cit. GAO Report, p. 21.

Mental Health. Serious medical conditions like gynecomastia went undiagnosed and untreated. At the immigration facility in Brooklyn, Haitians who had never been confined indoors for an entire day in their lives were prevented from ever seeing the sun and sky for 19 months.

The Haitian detention program was predictably expensive for the Federal Government, costing many times more than a humane and orderly program providing for the release of the Haitians pending the final determination of their asylum claims. The General Accounting Office estimates that the long-term detention of the Haitians cost the Federal Government about $49 per day per detainee, although the cost varied between $35 and $65 depending on the detention facility.[23]

Haitians were detained in remote regions in substandard conditions not because they were likely to abscond or because they were security risks. The Haitian boat people were detained without any consideration of individual circumstances as a punishment to discourage them from asserting or pursuing asylum claims and to deter their fellow nationals from seeking refuge in the United States.[24]

ADVERSE IMPACT OF "INTERDICTION"

The Immigration Emergency Powers Act authorizes the forcible interception or interdiction on the high seas of boats carrying potential asylum applicants, and it authorizes their return to the country from which they fled (sec. 240B(a)). This interdiction provision is a radical departure from established practice which allows an alien to present his or her case to an immigration judge through counsel, and it disregards the minimal norms of international law. Article 33 of the Protocol Relating to the Status of Refugees and section 243(h) of the Immigration and Nationality Act impose a clear duty not to expel or return a potential refugee to a territory where his or her life or freedom may be in danger. It is irrational to believe that a terrified refugee from a repressive government will articulate the basis of an asylum claim, or even know of the existence of legal protections and the right to claim political asylum, when undergoing an abbreviated interview with unknown American military personnel, on the high seas, in the presence of shipmates.

An interdiction program similar to that proposed in the act is already in effect against the flimsy sailboats of the Haitian refugees, and based on our experience, concerns about a further institutionalization of such a program are more than justified.

On September 29, 1981, President Reagan signed an Executive order authorizing the interdiction of Haitian sailboats in the Caribbean by the U.S. Coast Guard pursuant to an agreement with the Government of Haiti and acting in cooperation with the Haitian

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[23] Op. Cit. GAO Report, P. 28

[24] This treatment impermissibly imposes "penalties" on aliens because of their illegal entry (in violation of Art. 31, Convention on Refugees), unnecessarily restricts the movement of refugees (in violation of Art. 31, Convention), and the conditions of detention in inadequate facilities violates the refugees' right to humane treatment during their custody (in violation of Art. 25, American Declaration of the Rights of Man).

Navy. It is somewhat ironic that only months before this announcement that the United States was giving stern official lectures to the Malaysian Government about its obligations under international law not to turn away any refugee boats from Vietnam. Instead of working to ameliorate the repression and corruption in Haiti which causes refugee flight to the United States, our Government has insisted on a policy of preventing Haitians from filing asylum claims by intercepting and returning to Haiti their small, often overcrowded boats.

The State Department has announced that all persons would receive the full and fair hearing on their claims on the high seas that they are guaranteed under international law. But how is this possible when they are on a crowded Coast Guard cutter, 3 miles off Haiti, in the presence of Haitian military personnel, and without any access to lawyers?

Finally, our Government has resorted to an anemic legal fiction to justify this policy of interdiction and to evade domestic and international legal obligations of the United States not to return legitimate refugees to countries where their lives are in danger, and to provide them with basic legal safeguards in determining their eligibility for asylum. Technically, we are told, the U.S. Coast Guard is not intercepting Haitian refugees and returning them to Haiti because of domestic legal imperatives. Rather, according to the State Department, we are only helping the Haitian Government to enforce its own immigration law. This legalistic sleight of hand is not only an affront to Americans and Haitians alike, but it also results in increasingly scarce revenues collected from the U.S. taxpayer being used to enforce the laws of a regime generally accepted to be the most corrupt and repressive in the hemisphere.

Our experience indicates that mass influxes of persons requesting refugee status can be handled in an orderly manner. Interdiction is an entirely unacceptable method of policing our borders by denying to those persons entitled to refugee status a fair opportunity to have their claims determined. Although both the Executive order which established the Haitian interdiction program and the United States-Haitian bilateral accord stipulate that no person who is a bona-fide refugee may be returned without his consent to the country from which he fled, as a practical matter, the procedures under which the program is carried out preclude any meaningful or effective screening of refugees. Unless potential applicants for political asylum are asked probing questions concerning their reasons for fearing persecution, in a private setting, by legally trained specialists, with the assistance of skilled interpretors, interviews on board Coast Guard vessels are empty legal formalisms or, in the words of a New York Times editorial, are "walrus courts" designed to deport all those interdicted.

ADVERSE IMPACT OF SEVERE RESTRICTIONS

Under the proposed Immigration Emergency Act, judicial review would be impermissibly restricted. Perhaps the most manifest symptom of the distorted priorities of this legislation involves its recognition that ships seized under this act should benefit from traditional rights of judicial review (sec. 240D(a)(2)), although refugees

fleeing to our country in fear for their lives are completely denied the fundamental right of judicial review of denials of claims for political asylum in our country (section 240B(a)).

This act also gives the unreviewable power of life or death to an immigration inspector without special training as to a claim for political asylum or other claim, when the applicant does not present lawful entry documents to support the claim of admissibility (sec. 4, amending sec. 235(b) of the INA).

The act also proposes restrictions on the jurisdiction of the courts to review decisions made pursuant to the act, virtually guaranteeing that violations of fundamental due process rights will occur. Only habeas corpus proceedings would be available on the issue of whether the individual in question falls within the category of aliens subject to the coverage of the act. Section 204B completely eliminates court jurisdiction over determinations of admissibility or determinations of applications for political asylum in this country.

We strenuously object to these restrictions both because of the hallowed place that judicial review occupies in our entire system of government, and because it is precisely in times of emergency that the prospects of procedural violations are greater and that serious mistakes are made requiring access to the courts and the utlimate protection of the checks and balances of judicial review. We believe that this right of judicial review is mandated not only because of domestic and international legal norms, but that it is essential to our entire Nation's sense of fundamental justice and fairness and as a necessary corrective feature of our system of laws.

Our constitutional system of checks and balances demands that every governmental action or administrative act be subject to a degree of judicial scrutiny, and it is fundamentally incompatible with our system of government for a department of the executive to be the sole judge of its own acts. Judicial scrutiny is especially crucial in the context of claims for political asylum because the stakes are so very high, and miscarriages of justice may well have grave consequences that can never be corrected. Federal court jurisdiction over determinations of the immigration inspectors must be maintained not only to protect refugees seeking haven in the United States, but because access to the courts is a fundamental right of all persons in this country. Depriving the relatively small number of asylum seekers of their day in court will not deter refugees from fleeing to our shores, and will only undermine our own constitutional protections and the intricate balance that is basic to our system of government.

Proposals of streamlined adjudication processes appear to be based on the idea that courts are the major bottleneck in immigration matters. We ask the subcommittee to consider that backlogs where they exist have far more to do with administrative inefficiency and with ill-conceived Government-sponsored encroachments on the due process rights of aliens. Predictably, the courts have repeatedly sustained class action challenges to correct fundamental violations.

This presidential emergency powers legislation is a radical and dangerous departure from prior practice and due process protections fundamental to our system of laws, and unnecessary since the President arguably possesses many of these powers already. The

provisions authorizing summary exclusion, indefinite detention, and the interdiction of refugee boats violate our constitutional requirements and contravene international legal norms embodied in existing statutes. This legislation is legally untenable, and finds its moral rationale in a vengeful notion of deterrence.

A. The Haitian Program of the Immigration Service has been a trial run for this legislation, and courts have repeatedly found that it violated statutory and constitutional requirements. As a nation we can ill-afford to institutionalize such a policy.

B. Recent experience with the Haitian Program also demonstrates that it is unwise to construct new detention facilities for aliens including applicants for political asylum in this country. Indefinite detention in isolated areas often prevents access to attorneys and translators thereby greatly increasing the possibility of miscarriages of justice with the fateful consequences of returning bonafide refugees to torture and even death. Detention in remote prisons or camps often prevents access to relatives and friends causing serious and unnecessary suffering and extensive delay in the adjudication of asylum claims. Recent experience has demonstrated that such facilities are very expensive to operate.

RECOMMENDATIONS

Our testimony has detailed specific reasons why we oppose this proposed legislation. We also recognize a responsibility to facilitate public consideration of these fundamental issues by suggesting some policy considerations:

1. Clarification of these issues will be furthered if we insist on preserving a clear distinction between the rights of asylum seekers as constrasted with the rights of immigrants.

2. More effective measures should be taken to internationalize the refugee burden. International cooperation is essential to determine temporary protection and ultimate resettlement responsibility for refugees. Greater cooperation should be accorded international assistance agencies, like the U.N. High Commissioner for Refugees, to participate in refugee and asylum determinations and administer short term transit camps.

3. In good conscience, we can only conclude that persons are migrants unqualified for entry and return them if we have first applied our refugee laws without discrimination, and guaranteed respect for the fundamental rights of all asylum seekers.

4. The dramatic increase in recent years in the number of refugees demonstrates that the only effective solution to refugee emergencies in the long term is the eradication of the repression and the sheer misery that is the daily reality in many countries in our hemisphere. We encourage the public and private sectors to cooperate in encouraging the establishment of the rule of law and human rights protections in these countries.

5. We should adopt an evenhanded temporary sanctuary policy, similar in concept to the historical grant of "Extended Voluntary Departure." Safe haven would provide temporary protection from deportation for persons fleeing civil strife in their homelands, but would not make them eligible for future legal residency in the United States. This policy is presently practiced by Mexico and

Honduras, with regard to persons fleeing civil war in El Salvador, and a broader regional approach would appear worthy of consideration. Such a temporary sanctuary or safe haven policy would complement, but could not replace, an evenhanded refugee policy permitting qualified refugees to remain here permanently.

6. The catalyst for the request to Congress to grant the President emergency immigration powers, was the Mariel flotilla of 1980, involving 125,000 Cubans, and the arrival of a much smaller number—approximately 25,000—of Haitian refugees between 1979 and 1982. Yet, the very refugees involved in these emergencies still are suspended in a legal limbo. Both these groups of boat people have risked their lives in coming to the United States, and have established such considerable equities in our society that their presence here should be legally confirmed immediately.

In the absence of a comprehensive legalization program with an eligibility cut-off date of January 1, 1982, as recommended by the Judiciary Committee of the House of Representatives, Congress should enact special legislation granting some permanent status to these deserving persons.

APPENDIX.—NATIONAL MEMBER ORGANIZATIONS OF THE EMERGENCY COALITION FOR HAITIAN REFUGEES

A.F.L.-C.I.O.
A. Philip Randolph Institute.
American Civil Liberties Union.
American Council for Nationalities Service.
American Friends Service Committee.
American Jewish Committee.
Catholic League for Religious and Civil Rights.
Center for the Social Sciences, Columbia University.
Church World Service of the National Council of Churches.
Comite Interregional Pour Refugies Haitiens, Inc.
Committee for the Defense of Haitian Refugees.
International Ladies Garment Workers Union.
International Rescue Committee.
Lawyers Committee for International Human Rights.
Leadership Conference on Civil Rights.
Lutheran Immigration and Refugee Service.
N.A.A.C.P.
National Catholic Conference for Interracial Justice.
National Center for Immigrants Rights, Inc.
National Conference of Catholic Bishops.
National Emergency Civil Liberties Committee.
National Urban League, Inc.
Synagogue Council of America.
Unitarian Universalist Service Committee.
United States Catholic Conference.
Y.M.C.A. of the U.S.A.

Senator SIMPSON. Thank you very much.
Mr. Canino, I now turn to you.

STATEMENT OF ROBERTO CANINO

Mr. CANINO. Good afternoon, members of the Subcommittee on Immigration and Refugee Policy. My name is Roberto Canino and I am the LULAC district director for the State of Florida, the League of United Latin American Citizens is this country's oldest and largest Hispanic organization with more than 110,000 members organized in 45 States in the Union. We appreciate the opportunity

to come before you to discuss our views on the issue of Presidential immigration emergency powers.

It is clear that the 1980 Cuban flotilla has had a tremendous impact on the American public with regards to its views and impressions of immigration. Due to the barrage of celebrated media stories of various aspects of Cubans fleeing to the United States, Americans eventually began to believe that the shores of southeast America were unbelievably crowded with Cuban refugees. In addition, the flow of Haitian refugees during the last 1½ years has also fed this image. We will not nor can we disagree with realities which the State of Florida has been confronted with as a result of these flows. However, we do not believe that these peoples should or can be blamed for every problem Florida is facing today. Surely, the economic problems of unemployment and its consequences cannot be laid to rest on these refugees, yet many have and continue to demagogue the issue blaming Cuban and Haitian refugees for every problem plaguing Florida. We certainly do believe nevertheless, that States should be provided assistance to deal with situations arising from such an intense influx of people.

With this in mind, we regard the legislative proposal by the administration calling for Presidential immigration emergency powers as an extreme attempt to deal with situations such as the Cuban and Haitian flotilla. While matters perhaps could be addressed, under such provisions; the consequences to human and civil rights, to international relations and major administrative upheavals would not be worth the risks when there are other less drastic and reasonable alternatives available. Clearly, we could all like to avoid such crisis situations however it is prudent and in this country's best interest to plan ahead in order to minimize such crisis or be able to effectively deal with them.

CRITIQUE OF LEGISLATIVE PROPOSAL

The proposal and its accompanying analysis emphasizes its target as stopping any potential Cuban flotilla's from occurring. It is designed to primarily restrict such actions as those undertaken by U.S. citizens during this refugee movement. It fails to consider the difficulties in attempting to apply these provisions to circumstances arising in Southwest States and with the country of Mexico. We are extremely concerned with the criteria which the President is to base a declaration of emergency. The conditions indicated:

(1) A substantial number of undocumented aliens are about to embark or have embarked for the United States; (2) the procedures of the Immigration and Nationality Act or the resources of the Immigration and Naturalization Service would be inadequate to respond to the expected influx; and (3) the expected influx of aliens would endanger the welfare of the United States or of any U.S. community, are very broad and flexible. In our opinion there is much too flexibility given to the President in view of the tremendous and far-reaching powers he could exert under such an emergency.

In examining the application of these provisions to the reported influx of undocumented workers from Mexico, as a result of devalu-

ation of the peso, would emergency powers be required? Who would initiate the process for determining its application? Would State and/or local governments have a major role in calling for emergency powers as they do in disaster situations? What interaction or consultation would this Government have with the Mexican Government? Would we seek their active involvement?

These are some of the questions and issues which arise when considering the applicability of these provisions to circumstances which have or more readily occur along the United States-Mexico border. The administration in its analysis indicates that emergency powers could be declared even if only a few thousand aliens were expected to arrive, therefore emergency powers would be in effect virtually always in view of statistics maintained by the Immigration and Naturalization Service [INS] which reflect thousands of illegal crossings daily and weekly. Such a situation would have dire negative impact on the economy of the border States both for the United States as well as Mexico. International commerce along the border could be stifled therefore resulting in significant additional problems.

The power to restrict or ban travel of vessels, vehicles, and aircraft to targeted countries could create severe problems for relations between United States and Mexico as a result of our contiguous borders. Clearly, it is much easier to control travel if countries are separated by water. Again, the economic ramifications for United States and Mexico border States could be more disruptive than anticipated.

With regards to interdiction, we are vehemently opposed to the idea for inevitably the human and constitutional rights of individuals become expandable. Also, how would interdiction occur when considering countries who are contiguous?

Another major concern arises from the search and seizure provisions. Despite the emphasis which is made by the administration with regards to adherence to the fourth amendment it has been our experience that the INS has not aggressively complied with constitutional protections. Operation Jobs and a recent ninth circuit court decision support our belief that the Immigration and Naturalization Service [INS] is not operating within any guidelines designed to reduce, much less prevent, the violations of a person's human and civil rights. LULAC is not the first to conclude that protecting the rights of those with whom INS officials interface, is inconsistent and contradictory to their responsibility of immigration enforcement. U.S. District Court Judge Byrne observed after barring the deportation of 150 aliens that, "To say the INS is really interested in the rights of these people is absurd." Further, a recent Federal court decision prohibits the INS from detaining workers for questioning unless its agents can show a reasonable suspicion that each individual questioned is an illegal. The courts ruling was prompted by the tactics employed by the INS during area survey operations.

In addition, the use of the military including the Army, Navy, and Air Force, in the execution and enforcement of the emergency immigration powers is a major deviation from the manner in which the military has been utilized for domestic purposes. The presence and use of the military in such situations, in our opinion, would

establish an extremely dangerous precedent and cause community upheavals along the border. We would also question the necessity of having any military involved concerning immigration emergencies when their role has historically been reserved for cases of national security. There are other provisions in the law which allow for their involvement should this be a threat to our national security.

In closing, we would emphasize the need to allow immigration legislation to pass Congress before any further discussion on Presidential emergency immigration powers. Time must be given to analyze and assess the effectiveness of such legislation and its impact on immigration flows. In addition, we strongly believe and advocate that, where possible, the U.S. Government should undertake serious deliberations with countries with high push factors to discuss bilateral efforts to control such flows. Furthermore, sufficient funding should be provided to the INS to ensure its abilities to carry out its mandate more effectively and efficiently. Also, we would urge this subcommittee to seriously undertake an examination of Federal agencies capabilities to deal with crisis situations, such as the Cuban flotilla. As evidenced by this episode, the level of response, coordination and overall effectiveness of Federal agencies involved in dealing with refugees was strenuously criticized and requires a serious assessment.

Again, we would urge the above actions before any further attention is given to Presidential emergency immigration powers legislation. For the reasons and issues we raise, we cannot support the passage of any such legislation.

Thank you.

Senator SIMPSON. Thank you very much.

Father Gerard Jean-Juste.

STATEMENT OF FATHER GERARD JEAN-JUSTE

Father JEAN-JUSTE. Thank you for this opportunity to tell you of our experiences.

You see, we have been the guinea pigs for this legislation. We have been singled out for discrimination, incarceration, and interdiction. What has happened to us is a moral disgrace for this great land. The Haitians have been incarcerated in black concentration camps for 15 months. Their only crime was that they had fled oppression to seek freedom.

They, and they alone, were greeted not with the promise of the Statue of Liberty but rather with barbed wire. There were dozens of suicide attempts and tremendous mental suffering. Families were divided, some sent to Puerto Rico while others went to upstate New York. And the discrimination continues. Today nearly 167 Haitian refugees are incarcerated at Krome, by far the largest number there. Statistically, the discrimination continues. Some have been imprisoned nearly 1 year.

For nearly 2 years the U.S. Government has supported the brutal Duvalier dictatorship by its interdiction program. Who else but the Haitians can be interdicted and returned to their home country? No one. And many are returned to Haiti's national penitentiary and other prisons, where the conditions and tortures have

been described by Amnesty International as comparable to Nazi concentration camps. And yet these millions of dollars are spent because of an illusion: According to documents submitted to the President and cited in *Jean* v. *Nelson*, 711 F.2d 1455 (11th Cir. 1983), there was no mass immigration of Haitians; they account for only 2 percent of the undocumented immigration to the United States.

This legislation would take away judges and the role of the courts. The Haitians have always been given short shrift in the asylum process, but this legislation would take away the one authority—the Federal courts—which have repeatedly condemned Justice Department illegality and discrimination and its Haitian Programs.

The Justice Department took away our work permits. *National Council of Churches* v. *Egan*, No. 79-2959-Civ-WMH (S.D. Fla. 1979), said they were wrong. They mass-scheduled asylum hearings and denied all our claims. *Haitian Refugee Center* v. *Smith*, 676 F.2d 1023 (5th Cir. 1982), said they were wrong. They deprived us of the ability to speak with lawyers and sent us to prisons on the Canadian border in what a Federal judge called a human shell game. *Louis* v. *Meissner*, 530 F. Supp. 924 (S.D. Fla. 1981), said they were wrong. They incarcerated us and only us. *Jean* v. *Nelson* said they were wrong.

They have refused to listen to our stories. Yes, we are black. We are from Haiti. But we have a right to tell them of the extortion, expropriation, rapes and brutal beatings and tortures which we suffer. They must listen when my brothers tell them their hair-raising stories of the disappearances of their parents and siblings, the murders, the unchecked brutalities of Duvalier's Tonton Macoutes.

This legislation would continue the discrimination and the hysteria and would continue to apply inhuman solutions to human problems. The answer is not to create more misery and injustice.

Part of the answer is for the United States to stop supporting a totally corrupt government in Haiti which misappropriates U.S. tax moneys, allows no political opposition, imprisons all who are even suspected of opposition, and allows its security forces to terrorize its population.

This legislation is designed to exacerbate tensions, not to solve problems. It will not work. Haitians will continue to flee their country and suffer the indignities to which you may subject them as long as there is no freedom in Haiti.

But perhaps worst of all is that this legislation is, once again, a betrayal of everything this great bastion of freedom is supposed to stand for. It should be withdrawn.

Thank you very much.

Senator SIMPSON. Thank you very much.

Let me have a few questions.

In the order of the agenda here, I would ask Archbishop McCarthy, you do indeed describe very carefully our necessity to have family reunification in our legal immigration.

What do you discern as the abilities, and what are the limits of a local community response to a mass migration, separate and apart from legal immigration for any purpose?

Archbishop McCarthy: I think the experience we have had is we have been taxed by the Mariels. We can't be expected to handle migrations of that extent.

One of the concerns of the Federal Government is to see people who do have a right to seek asylum do not all remain here.

On the other hand, the Cuban population have proved they will make extraordinary sacrifice. We have a situation where many, many people accept whole families living in their home.

Senator Simpson. And you do indicate any future mass migration might likely be avoided if we have and assure ourselves of adequate family reunification programs?

Archbishop McCarthy. Yes, that would be normal thing for the family to do.

Senator Simpson. Do you think we might have averted the first migration from Cuba in the early 1960's if we would have had a generous family reunification program?

Archbishop McCarthy. Yes, because we were not handling it, you might say, the responsibility.

Senator Simpson. At present, the administration is only allowing immigration of immediate relatives: parents, spouses and minor children of U.S. citizens from Cuba, and you suggest that normal immigration would assist in a——

Archbishop McCarthy. No immigration is permitted at all at this time from Cuba.

We also have a concern that our Government has made some commitment to permit some of the freedom fighters be allowed from Cuba.

Senator Simpson. Senator Kennedy and myself, he is the ranking member of this subcommittee, have both written to this administration and at present there is right now immediate relative immigration activity going on.

I see—we obviously are dealing with different facts.

Archbishop McCarthy. Who is in charge of this in Miami?

Senator Simpson. Immediate relative reunification.

We are talking about parents, spouses, and minor children. We can share that. You are welcome to place in the record what you may want to.

I know you and—I had a very fine visit with you; but, in any event, we have a most generous legal immigration in the United States. We have had almost 500,000 persons per year legally immigrating, including refugees, into the United States. I think that is an important factor to recognize. That is what we do.

Of course, we have to have our limits.

Well, in any event, I can certainly acknowledge what you are saying. I am grateful to you for explanation of that family reunification. It does take the pressure off of either those who are going down to try to bring their relatives back or just not being able to wait for the long immigration process to take its course.

I might ask Mr. Helton, your testimony indicated that detention encourage the applicant to return to the country he fled because of his fear of persecution.

If the detained applicant is justly and truly in fear of persecution, it is really your belief then that he would return to the very persecution which he fled; is that what you are saying?

Mr. HELTON. I think that it is quite conceivable that for the person who faces limitless detention in facilities that were designed as short-term facilities without any training on the part of the detention personnel, that they would elect to return and take a risk sometimes, and I think quite a few refugees have done that.

I think that this is a real possibility for refugees.

Senator SIMPSON. I have been to Krome on previous visits, and I know how strongly you all feel about that, and certainly I understand that. It would be difficult for me to see a person truly fearing persecution returning to that simply because of detention of a month, or admittedly too long in many cases—right here in this very court, the judge determined that.

But in any event I want to get that in perspective.

Mr. HELTON. We are talking about detention sometimes in terms of years.

The consequences are sometimes even more subtle. For example, giving up their right to appeal, a denial of asylum in order to obtain early release consideration.

We think it is unfair and illegal to coerce people in that situation, through long-term detention.

Senator SIMPSON. This legislation that is presented to the subcommittee by both Senators and the administration has its own passage in a sense.

This legislation is the framework for contingency planning for unknown future emergencies.

You oppose deterrence and you recognize instead the international agreements or arrangements.

Do you believe an international arrangement can be accomplished for an unknown emergency?

What type of arrangement do you have in mind?

Mr. HELTON. I think the legal justification for that kind of arrangement exists under the Attorney General's parole power.

Since the 1950's the Attorney General has utilized the parole power to bring in refugees into the United States, including the Cuban refugees. That use of the parol power, coupled with beneficial arrangements to avoid an undue burden, or indeed perhaps a national arrangement, are it seems to me the only realistic approaches in a way not to deter asylum seekers.

Senator SIMPSON. One of the things when I came to the Senate was one of the abuses of the parole power authority.

So that is something I observed.

Now, there are 170,000 applicants for asylum. The system has obviously broken down in that area.

Mr. HELTON. The system was never there. Even though the Refugee Act of 1980 was passed, the Immigration and Naturalization Service just has not implemented the act.

Senator SIMPSON. That is very difficult, when we have procedures that are five layers deep. If that same person were in their own country, very simply, you are not a refugee, and that is the end of their due process.

They come closer and closer to the United States of America and receive more due process than they would in their own country, and then the asylum proceedings start from the district director.

And when you are all done, you come to deportation, and you can start again at go. That is where the asylum broke down.

Mr. HELTON. The implementation gap is crucial there should have been training for immigration judges. Without a commitment to sufficient resources the administrative authorities will not implement the law. Recourse to the court is made necessary only by the failure to implement the Refugee Act of 1980.

Senator SIMPSON. That will be one of the aspects of the Senate legislation.

Reverend Horlander, if I may, you shared with us that our starting principle in making of immigration emergencies should not be keeping everybody out, but rather processing in those who are qualified to enter.

Does not our current system of legal immigration do this, and do you agree that mass migrations may jeopardize this generous policy?

Reverend HORLANDER. I am not sure that mass migration would jeopardize this general policy.

The intent of what we are espousing is to question the appropriateness of the Emergency Powers Act.

As I listened to some of the speakers on the two earlier panels, hearing one who allowed the cooperative work of Dade County area, and we can testify to that, others who spoke of the whole culture change which is for the better, most of those who were speaking in favor of that act were really, it seems to me, were addressing management problems; and I think that is what we are attempting to address also.

It seems to us that is the far better thing, to assign the responsibility of—to a Federal agency to do some planning and to make preparations for screening, to see diplomatic work is accomplished, rather than to simply provide the power to arbitrarily cut off the influence in the case of a mass immigration.

It is a planning aspect, the screening and the diplomacy, the overall administrative aspect of such a program that we seek to achieve.

Senator SIMPSON. Let me ask a final point.

You are really proposing an international solution to an immigration emergency, and you are critical of any type of Federal contingency plan; but you are indicating your support of full Federal fiscal responsibility if the event occurs.

If mass immigration is a Federal responsibility, and I agree it is, then do not we need a contingency plan, a statutory plan to deal with mass migration so the Federal fiscal responsibility will come about?

Reverend HORLANDER. Well, I would say first and foremost it is a Federal responsibility, but it is also the responsibility of the Federal Government to make sure that the responsibility is shared with State and local government as well as the private sector.

We are all in the soup together. We need to accept the reality of that.

Senator SIMPSON. I agree.

But knowing my colleagues in the Senate and some in the House, if there is going to be some kind of a Federal fiscal responsibility

for an unknown time, they are going to assure themselves there is some kind of machinery for that unknown time.

We are not going to say disregard the preparation for another mass migration, but be ready to put up $100 million or $200 million for whenever it comes.

That is a reality of political life. It is something you can consider, and I hear what you are saying about the international solution and the need of many suggestions that suggest a support system of caring diplomacy, and those things are true.

Mr. Hooper, you opposed the current immigration emergency legislation because it would grant the President extraordinary and ill-defined powers to suspend heretofore guaranteed fundamental rights.

I gather at the same time you felt this legislation unnecessary, because the President already possessed some of these powers under current law.

In light of your comment, your second comment, does not this more specific immigration emergency legislation implicity restrain the President from going beyond the very limit of these bills, since these bills have defined the areas in which the President and Congress are agreeing he ought to act?

Is that not reasonable?

Mr. HOOPER. This legislation is a legal and human can of worms this country cannot afford.

For various specific reasons we have opposed the legislation. One of the things that incidentally make this legislation unnecessary is that certain of these powers may arguably already be possessed by the President.

So our attempt, in pointing that out to the committee, is to say they are not areas at the moment, at least, arguably, that the President does not have the power to respond to. The President can respond in a very specific way to a very specific situation. If that is necessary, we would encourage and support that.

We are saying at this point in time, with these two mass migrations we don't believe this legislation is necessary.

Then we oppose the specific aspects for very specific reasons.

Senator SIMPSON. It may be ironic, but in the first case you and I may be on the same side.

I have found enough in this issue for 3 years, if you stay at it long enough, that you will be on both sides; and you are on this side and sometimes you will be over there on that side.

Your main objections to this legislation are the proposition of summary exclusion. That comes up not just here but in the other immigration reform acts, and possible violation of refugee protocol.

Senator Hawkins' bill, S. 1725, contains no provisions, as I read it, for summary exclusions, and specifically mentions our international legal obligation in interdiction procedures.

Could you comment specifically on your opinion of that legislation, that emergency bill?

Mr. HOOPER. I am afraid I can't for two reasons:

One, and most importantly, our written testimony and the position of our organization is based upon the legislation of Senator Chiles. For very specific reasons, and that is what we oppose in Senator Chiles' legislation.

If the Hawkins bill, if there is no intent in there for there being any kind of summary exclusion provision, if there is no possibility that interviews—that people will undergo once they are inducted, if they would again somehow follow process right, if you would then ask do we find that more acceptable, I think the answer is obvious.

Senator SIMPSON. I appreciate it if at your convenience you will review that bill and give us your thoughts.

Mr. HOOPER. I will be delighted.

[Subsequent to the hearing, the following material was submitted for the record:]

NATIONAL COALITION FOR HAITIAN REFUGEES

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May 11, 1984

Senator Alan Simpson
Chairman
Subcommittee on Immigration and Refugee Policy
Committee on the Judiciary
United States Senate
Washington, D.C.

Dear Senator Simpson:

Thank you again for having invited the views of the forty-five member organizations of the National Coalition for Haitian Refugees during the consideration by the Subcommittee on Immigration and Refugee Policy of the Immigration Emergency Powers and Procedures Acts proposed separately by Senators Chiles (S. 592) and Hawkins (S. 1725). I am writing at this time to respond specifically to your request at the time of that hearing that we provide further views concerning the particular legislation proposed by Senator Hawkins (S. 1725).

This legislation proposes that Congress grant to the President without reservation of Congressional oversight extraordinary powers to suspend time-honored procedural rights and practices because of the ill-defined spectre of a future immigration emergency. While some of the provisions in S. 1725 are more carefully crafted and less extreme than the parallel provisions of S. 592, our criticisms of the spirit and overall effect of this legislation are similar to the criticisms presented to your Subcommittee in our written testimony.

We oppose this legislation because: it grants a vague authority to the President to exercise almost limitless discretion in declaring an "emergency"; it authorizes the expedited return from the United States of aliens including potentional asylum applicants; it allows the indefinite detention of persons awaiting asylum hearings or other processing; it grants authority to intercept on the high seas boats carrying potential asylum applicants and to return them to the country from which they fled; and, finally, it severely and needlessly restricts the heretofore unchallenged right of judicial review of administrative agency action. We specifically analyze these concerns below, and conclude generally that this bill is not necessary, its provisions will cause needless suffering to those caught in its wake through wholesale violations of fundamental protections, and it does not address the underlying problems that have led to refugee emergencies in the first place.

(A) Sections 2408 (a) (3) (A) and (B) of S. 1725 provide for the "preclusion of entry" and "return" of any class of inadmissible aliens lacking documents. This provision also mandates that the Attorney General in carrying out these measures must exercise reasonable care that the international legal obligations of the United States are observed. This provision is excessively vague and the discretion granted to the Attorney General is clearly excessive. It is precisely because of the possibility of political pressures and short-term exigencies that our nation's founders wisely crafted a system where the judicial system, not political appointees, would sit in judgement when rights of fundamental procedural and substantive due process are at stake.

The heritage of our country as a haven for refugees seeking safety,

and the strength of our beliefs in a system of laws, demands that we not remove the judgement as to what are international legal obligations from the hands of an experienced judiciary. Placing the responsibility and discretion as to who should enter and who should be returned from the United States, and under what conditions, solely in the hands of the Attorney General, increases the undeniable dangers of barring, even unintentionally, from our country refugees who are unable or unwilling to immediately articulate the basis of their asylum claims because of an absence of the rule of law in their homeland. In the long run the "efficiencies" of this kind of quick-fix political solution to undeniably complex issues are far outweighed by the costs both to incorrectly excluded refugee groups and to our own system of laws.

Section 2408S(a) (3) (A) and (B) also effectively authorize the forcible interception and forcible return of boats or other conveyances carrying potential asylum applicants once they enter the territorial jurisdiction of the United States. While the bill specifies that this "prevention of entry" can only occur in accordance with international law, it undeniably represents a radical departure from established practice which allows an alien to present his or her case to an immigration judge through counsel. Additionally, this provision also sets no standard as to what international legal standards the legislation contemplates as applying. A good faith assurance that international legal norms should apply does little to protect refugees given the wide range of opinion on exactly what duties these legal norms in effect impose.

An interdiction program similar to that proposed in the Act is already in effect against the flimsy sailboats of the Haitian refugees, and based on our experience, concerns about a further institutionalization of such a program are more than justified. It is irrational to believe that a terrified refugee from a repressive government will articulate the basis of an asylum claim, or even know of the existence of legal protections and the right to claim political asylum, when undergoing an abbreviated interview with unknown American military personnel, in the presence of shipmates.

Our experience indicates that mass influxes of persons requesting refugee status can be handled in an orderly manner. Interdiction is an entirely unacceptable method of policing our borders by denying to those persons entitled to refugee status a fair opportunity to have their claims determined. Although both the Executive Order which established the Haitian interdiction program and the U.S.-Haitian bilateral accord stipulate that no person who is a bonafide refugee may be returned without his consent to the country from which he fled, as a practical matter, the procedures under which the program is carried out preclude any meaningful or effective screening of refugees. Unless potential applicants for political asylum are asked probing questions concerning their reasons for fearing persecution, in a private setting, by legally trained specialists, with the assistance of skilled interpretors, interviews on board Coast Guard vessels are empty legal formalisms or, in the words of a New York Times editorial, are "walrus courts" designed to deport all those interdicted.

(B) Section 2408 (b) (2) of Senator Hawkins' bill proposes the possible institutionalization of a national policy of indefinite detention of the class of aliens declared to be the subject of the immigration emergency. This extended mass detention policy may result in an inhumane and unnecessary repetition of the recent ordeal of the Haitian refugees. It would also mark a stark departure from established practice and particularly threaten to undermine the exercise of fundamental rights by those seeking asylum in our country. Traditionally, aliens seeking admission to the United States have not been detained after a short processing period, unless they were demonstrated to be security risks or likely to abscond.

In a study published in June 1983, the United States General Accounting Office concluded that "the cost and the adverse humanitarian effects of long-term detention do not make it attractive as a normal way of dealing with undocumented aliens seeking asylum." (USGAO, "Detention Policies

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Affecting Haitian Nationals", June 16, 1983.) Such an extended detention policy would also result in scathing attention being paid to those areas where the detention camps were located. Residents of south Florida already know the impact of the national reputation of being "the place where the Haitians were imprisoned."

Such a policy of indefinite detention threatens the rights of applicants for political asylum under U.S. and international law. Detention greatly reduces the possibility that an asylum applicant can benefit from effective assistance of counsel and can adequately complete an application for political asylum. It is clear from the experience of the Haitian boat people that indefinite detention directly interferes with the exercise of the statutory right of aliens to request political asulum in the U.S. Detention also interferes with an alien's right to apply for political asylum through greatly complicating the process of collecting the necessary identification and documentation to support an asylum claim. There is a great likelihood that the detention power would be used selectively and discriminatorily against nationals from some countries and not against those from others, resulting in divisiveness and extensive legal challenges.

Section 2408 (a) (4) (A) of S. 1725 proposes an exemption from federal health and environmental protection laws for prisons and other facilities where aliens detained under these emergency powers might be housed. This proposal raises the grim possibility of planning today for the mass detention tomorrow of aliens in substandard conditions. We must learn enough from the past so as to avoid the repetition of its most tragic lessons. The punitive long-term detention of the Haitian refugees was further exacerbated by the substandard conditions at the prisons where they were detained for fourteen to eighteen months. I have personally visited most of these facilities as have representatives of our member organizations. Typically, these facilities -- designed only for short term detention -- were overcrowded and underequipped, often resembling concentration camps. While conditions at the Krome North facility shocked many Floridians in the Fall of 1981, conditions at other facilities were indisputably worse. Citing the Immigration Service and the Public Health Service as authority, the General Accounting Office concluded in its report cited earlier, that "the Haitian detainees, for the most part, were housed in facilities that were unsuited for long-term care. In addition, services and basic amenities were minimal. The mental health of long-term detainees was perhaps the most serious problem with which the Public Health Service could not effectively deal." (USGAO, p. 21.) During the indefinite imprisonment many refugees exhibited symptoms of physical and psychological distress and there were twenty-nine suicide attempts reported by the National Institute of Mental Health. Serious medical conditions like gynecomastia went undiagnosed and untreated. At the Immigration facility in Brooklyn, New York, Haitians who had never been confined indoors for an entire day in their lives were prevented from ever seeing the sun and sky for eighteen months.

(C) Section 240C (a) (2) ironically grants far more rights to judicial review of administrative agency action to boat owners and operators affected by this bill than Section 2408 (b) (2) grants to refugees fleeing to our country in fear of their lives. This latter provision completely denies this traditional remedy of judicial review for any decision of the Attorney General regarding his decision to detain, transfer or release any alien, except that any detained person may obtain very limited review through habeus corpus proceedings on the question of whether that person falls within the category of aliens subject to detention.

We strenuously object to these restrictions both because of the hallowed place that judicial review occupies in our entire system of government, and because it is precisely in times of emergency that the prospects of procedural violations are greater and that serious mistakes are made requiring access to the courts and the ultimate protection of the checks and balances of judicial review. We believe that this right of judicial review is mandated not only because of domestic and international legal norms, but that it is essential to our entire nation's

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sense of fundamental justice and fairness and as a necessary corrective feature of our system of laws.

Our constitutional system of checks and balances demands that every governmental action or administrative act be subject to a degree of judicial scrutiny, and it is fundamentally incompatible with our system of government for a department of the Executive to be the sole judge of its own acts. Judicial scrutiny is especially crucial in the context of claims for political asylum because the stakes are so very high, and miscarriages of justice may well have grave consequences that can never be corrected.

I sincerely appreciate your invitation to comment in writing concerning these three specific provisions of Senator Hawkins' legislation, S. 1725. I hope that these comments will facilitate the deliberations of your Subcommittee concerning this legislation that we believe is both fatally flawed and completely unnecessary.

Very Sincerely Yours,

Michael S. Hooper

Michael S. Hooper
Executive Director

Senator SIMPSON. Mr. Canino, you have expressed opposition to the legislation, and I will ask you how would you feel we should respond to any future mass migration such as the Mariel Boatlift?

Mr. CANINO. Senator, I believe there has been a misunderstanding. I have not opposed the legislation.

At the beginning of this, when I gave my input, I told you I was wholeheartedly in support of this emergency bill. There is a possibility that you were given testimony, written testimony from Mrs. Hawkins in the past that feels there was a couple—that testimony was not available to me.

What I am testifying here is the sentiment of the people in south Florida, Senator Hawkins representing south Florida, and again I would like to say we do not oppose this bill the way that—in general.

We oppose certain portions of the bill. We believe that a good bill could be put together if there are certain emergencies that would be modified.

For example, the judicial review is one of them. Every citizen in this country is entitled to a judicial review, and that portion of Senator Chiles' bill I think doesn't fit very much with the belief and philosophy of this country.

Again, we do support Senator Chiles' part where he requests full Federal fiscal responsibility by the Federal Government, but I just wanted to make it clear with you, with the President of the United States and we—you get our support as far as this bill is modified to include those provisions.

Senator SIMPSON. I appreciate that. I didn't mean to embarrass you in any way.

In referring to the written testimony that was presented to me, the statement was made clearly from the organization in Washington, "For the reasons we have raised, we cannot support passage of any such legislation."

Mr. CANINO. My apology for someone else sending this to you without me reviewing it first.

Senator SIMPSON. In listening to your testimony I was a bit puzzled because of the written testimony presented.

Mr. CANINO. I have reviewed the bill, and these comments after I have researched this here with the community headquarters, with south Florida, that is our presentation.

Senator SIMPSON. Thank you.

I want to thank you all very much. All of you have been very helpful, very generous with your time. I thank you.

I want to thank Chief Judge Joe Eaton for the facilities.

This hearing is concluded.

[Whereupon, the committee was adjourned.]

APPENDIX

Additional Submission for the Record

Statement of Ambassador H. Eugene Douglas, U.S. Coordinator for Refugee Affairs

Mr. Chairman and Members of the Committee: I appreciate this opportunity to appear before the Committee as the U.S. Coordinator for Refugee Affairs to testify on behalf of the Administration's proposed Immigration Emergency Act.

The significance of this legislation extends well beyond the obvious arena of immigration and border controls. Our success in fashioning effective new authority in this vital area can help restore the confidence of the American people in the Federal Government and can contribute to a new consensus that we must regain control of our borders.

The existence of our national refugee policies depend upon a national consensus.

The mismanagement of an immigration emergency—such as we experienced in the Mariel boatlift—has the capacity to violently upset the delicate balance of that consensus, and thereby poison the goodwill of Americans toward immigration and refugees alike.

As many of you know, we have resettled an unprecedented number of refugees in the United States since 1975.

While the refugee program has its problems, most Americans have been willing to bear with them and support the refugee program out of a long tradition of welcoming the politically oppressed.

The sudden influx of Cuban entrants into the U.S. in 1980, which included large numbers of criminals and other socially maladjusted people, seriously jeopardized the public's goodwill. This influx also put exceptionally heavy financial and social strains on some communities, and left us with a residual population which must be permanently incarcerated in order to protect our people.

The entire experience left the American public with a feeling that the government had broken faith with them by failing to protect normal channels of immigration from cynical exploitation.

That is the kind of experience which destroys consensus, and which—to this day—has left a lingering doubt in the public's mind over whether such a crisis will happen again.

In this atmosphere, the American people can hardly be blamed for wanting new assurances that the government can manage all three areas of entry into this country—immigrants, refugees, and illegial aliens—nor can we easily blame the public for balking at attempts to widen the scope of any of these three areas. This Administration is attempting to repair the people's loss of faith in Washington's management of our borders through a three part program:

—support of the Simpson-Mazzoli immigration bill now before the House, after having passed in the Senate.

—careful attention to the consultation process available through the Refugee Act of 1980 to more closely match refugee admissions with domestic resources available to receive and resettle new arrivals, and

—the Immigration Emergency Act to cover unanticipated major crises of mass migration.

Another aspect of the Emergency Immigration Act which is most important is its mandate to consult with State and local governments in formulating emergency plans. One cannot reasonably expect the people to obey laws and cooperate in activities that they do not understand.

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Since becoming U.S. Coordinator for Refugee Affairs in March of this year, I have spent a great deal of time talking with State and local government officials who are understandably concerned that we consult with them concerning refugee admissions into this country.

The States most heavily affected by the influx of refugees resettled here since 1975 are in some cases, also States with high populations of illegal immigrants. There needs to be a coordinated policy established to insure that both immigration and refugee contingencies are met with plans that include the full knowledge of and consultation with State and local officials.

In conclusion, I would like to say that the migration as well as the refugee situation in the world today continues to grow as the number of countries affording their citizens basic human rights and economic opportunities continues to decline.

More than ever before, there will be increased pressures on the United States to take not only the victims of political upheaval, but those who are the victims of the failed economic policies in which these regimes often result.

While Americans have traditionally had a generous refugee and immigration policy, we have also had an orderly one rooted in due process, with priorities established by the American people.

The opportunity to resettle in the United States is not a right—but a gift. That gift is rooted in the memory that most Americans—at one time in their families—were all immigrants to this country.

It is to our great credit that we continue that tradition. It is also our reponsibility in government to protect that tradition with laws that prevent its abuse, exploitation and manipulation. For that reason, I urge the Committee to support this legislation, and seek its quick implementation, so the Immigration Emergency Act can take its place as the third leg of our national policy to effectively manage immigration, illegal aliens and refugees.

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177 BEST AVAILABLE